
(2019) 07 JH CK 0134
In the Jharkhand High Court
Case No : Writ Petition (L) No. 538 Of 2012

G. Biswas (Gopesh Biswas)	Vs	APPELLANT
M/S. Tata Motors Limited And Ors		RESPONDENT

Date of Decision : 06-07-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 11(A)

Citation : (2019) 07 JH CK 0134

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : S.K. Ughal, D.K. Karmkar, V.P. Singh, A. K. Das, Rashmi Kumari

Final Decision : Dismissed

Judgement

Heard counsels for the parties.

The present writ petition has been filed for challenging the award dated 21.06.2011 passed by learned Presiding Officer, Labour Court, Jamshedpur in Reference Case No. 07/1989, whereby the dismissal of the petitioner-workman has been approved by the Presiding Officer, Labour Court, Jamshedpur.

From pleading and argument, it appears that the petitioner-workman was employed under the respondent on temporary basis on 02.10.1963 and subsequently been confirmed on 21.11.1964 and also been given promotion.

The petitioner had been charge-sheeted and suspended on the same date i.e. 04.10.1986. The allegation in the charge-sheet is as follows:-

(i) On 24.2.86 you refused to accept one consignment G.I. Note No. 116 on the ground that the same was not being dealt with by you and the same consignment was not kept in the strong room as per the instruction of superior and later on the said consignment was found missing and has caused loss of Rs. One Lakh Five thousand.

(ii) On 4.8.86 the material of several G.I. notes of different dates which were

received by you and were under your control and the same material were also found missing.

(iii) After check of record of receipt of the C.R.S. (N.A.) it has been detected that the quantity of materials received by you have been altered and enhanced. Hence the workman was charged for misconduct, wilfully disobeying the reasonable order of a superior, habitual negligence of duty and deceptive/corrupt practices."

Thereafter, Enquiry Officer has been appointed and after due enquiry the Enquiry Officer has found the petitioner guilty, and on such recording of guilt, the petitioner has been finally dismissed.

On such dismissal an Industrial Dispute has been raised and on failure report the matter has been referred by reference order dated 25.02.1989. The terms of reference reads as under:-

"Whether the termination of service of Mr. G. Bishwas ticket No. 9971/67101/1, store keeper, workman of Telco Company Ltd. Jamshedpur is proper and justified? If not, whether he is entitled to reinstatement and/or any other relief?"

After completion of pleading and argument, Labour Court has held the domestic enquiry conducted by management as fair and proper. On recording such finding, the Labour Court has proceeded under section 11(A) of the Industrial Disputes Act, to examine whether the finding recorded in the domestic enquiry is perverse and further whether the order of dismissal is disproportionate to the charges levelled against the petitioner-workman.

After re-appreciating the entire material available on record and the admission made by the workman before the Enquiry Officer, it has been found by the Labour Court that the finding of guilt is supported by the material available on record. The finding of guilt has been approved by the Labour Court.

So far as, the proportionality is concerned that aspect has also been examined and on considering that the concerned workman has refused to obey the command of the superior who is the holder of the post of Store Keeper and considering the entire circumstances, the quantum of punishment has been found proportionate to the charges.

Law has been settled by the Apex Court in Para-32 of the judgment reported in 1973 (1) SCC 813 in case of The Workman of M/S. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. Vs. The Management & Ors. Para-32 is quoted hereinbelow:-

"32. From those decisions, the following principles broadly emerge:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a

proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the, findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to, adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the, merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before-it for the first time in justifications of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his, action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee, and to enable the Tribunal itself to be satisfied about the alleged misconduct,

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to, suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate v. The Workmen* (1), within' the judicial decision of a Labour Court or Tribunal.

32-A. The above was the law as laid down by this Court as on 15-12-1971, applicable to all industrial adjudication arising out of orders of dismissal or discharge."

Thus, law is clear that once it has been held that the domestic enquiry conducted as fair and proper in accordance with natural justice then the Labour Court has limited jurisdiction and only perversity or victimisation of the employee can be looked into.

In the present case, the concerned Labour Court has exercised its jurisdiction and on the basis of material on record and reasoning, the finding of guilt as well as the punishment has been approved. Thus the Labour Court has exercised its jurisdiction in a reasonable manner and as such this Court find no ground for interference. So far as the point of the victimisation raised by the petitioner that has also been dealt by the concerned Labour Court and it has been held that Mr. Vancheswaram is concerned, he is superior to the charged workman and there were three workmen under the charged workman.

The earlier refusal has been made by Mr. Vancheswaran but on the command of the superior the consignment has been accepted but even after written command the same has not been cared or obeyed by the charged workman.

Thus, the approach of Mr. Vancheswaran was totally different towards his superior. He has received the confinement as per the command of the superior while the command of the superior has been disobeyed by the charged workman. Thus, this point raised by the plaintiff-workman has been well considered and negated by the Labour Court with rational reason.

In view of above discussion, this Court finds no merit in the present writ petition. Accordingly, the same is, hereby, dismissed.