
(2001) 12 MP CK 0038

In the Madhya Pradesh High Court

Case No : Writ Petition No. 680 of 1999

Gwalior Potteries and Others

APPELLANT

Vs

Bhagwandas and Others

RESPONDENT

Date of Decision : 11-12-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2002) 94 FLR 521 : (2002) 4 LLJ 191

Hon'ble Judges : S.S. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Jha, J.—Petitioner have filed this petition under Article 227 of the Constitution of India, challenging the direction of reinstatement of respondent No. 1.

2. Respondent No. 1 Bhagwan Das was serving as Helper. Respondent No. 1 was served with a charge-sheet dated October 29, 1996 and after enquiry services of respondent No. 1 were terminated vide order dated June 11, 1987. Dispute under Sections 31, 61 and 62 of the Madhya Pradesh Industrial Relations Act (hereinafter referred to as "MPIR Act") was filed before the Labour Court. Respondent No. 1 has challenged that the order or termination is void and he prayed that he should be paid entire back wages and he should be treated in service. Labour Court, in its final order dated June 15, 1992, held that the departmental enquiry against the workman is valid but the nature of allegation is such on which punishment of dismissal from service is excessive. The allegation against the respondent No. 1 was that he had abused and threatened his superior officer. The Labour Court held that respondent No. 1 had not attacked upon the officer. The language used by respondent No. 1 is not improper considering the social status of respondent No. 1 and modification of punishment to warning and directed reinstatement without back wages. In an appeal, Appellate Court has affirmed the order passed by Labour Court.

3. Counsel for petitioners submitted that once departmental enquiry is found to be valid and misconduct is established then Labour Court had no jurisdiction to interfere with quantum of punishment. Counsel for the petitioners submitted that the Labour Court is riot vested with the power to interfere with the quantum of punishment. Counsel for petitioner placed reliance upon the judgment in the case of Government of Tamil Nadu Vs. K.N. Ramamurthy, . In this case, the Apex Court while considering the scope of judicial review of departmental enquiry held that the Court can interfere with the departmental enquiry only if inference of misconduct cannot be drawn from the charges and the supporting particulars, or if the charges are contrary to Law, While referring to the judgment in the case of Union of India and others Vs. A.N. Saxena, ; and Union of India and Others Vs. K.K. Dhawan, , the Apex Court held that the finding of disciplinary authority is not open to challenge on the facts of the case. In the case of Union of India (UOI) and Others Vs. Upendra Singh, , it is held that the Tribunal has no jurisdiction to go into the correctness or truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority. The function of the Court/Tribunal is one of Judicial review, the parameters of which are repeatedly laid down by this Court. The Tribunal or the Court can interfere only if on the charges (read with; imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to law.

4. Counsel for petitioners then referred to - Division Bench judgment of this Court In the case of Manager, Central India Flour Mills, Bhopal v. Mohd. Ishaq Sagir and Anr. 1994 III LLJ (Suppl) 205 (MP DB). In this case, it is held that the employee during working hours of the factory abusing Manager filthily in the presence of other employees is a major misconduct and domestic enquiry resulting in punishment of dismissal has been held to be justified. While considering the, scope of Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 and rules made thereunder, scope of para 12 of Standard Standing Orders was considered and it is held in this case that the provision of para 12(f) includes drunkenness, riotous or disorderly behaviour, during working hours as the act of workman abusing superior officer has been held to be a major misconduct interpreting paras 12(3)(b) of Standard Standing Orders.

5. Counsel for petitioner, therefore, submitted that abusing superior officer filthily during working hours is a major misconduct and punishment of dismissal cannot be said to be excessive. Counsel for petitioner submitted that in the case of U.P. S.R.T.C. and Others Vs. Har Narain Singh and Others, , it is held that in case of dismissal from service pursuant to departmental enquiry, it will not be proper for the Court to appreciate the evidence led in enquiry and quash the order passed by the disciplinary authority. The Court is not sitting as an appellate authority over the finding recorded by the disciplinary authority. The re-examination of the evidence led in the disciplinary proceedings is not warranted.

6. Counsel for the petitioners submitted that in the case of Janatha Bazar

(Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourakara Sangha Etc., while considering the scope of Section 11A of Industrial Disputes Act, it is held that where the charge of misappropriation of goods is established in the domestic enquiry, and the delinquent employee was dismissed from services, it was improper on the part of Labour Court in directing his reinstatement with 25% back wages on the ground that his past record was unblemished. It is held that it is the discretion of employer exercising in imposing the penalty after misconduct is proved in domestic enquiry. It is held that Labour Court cannot substitute the penalty imposed by the employer while exercising the power under Sections 11A and 10 of the Industrial Disputes Act. In the case of Punjab Dairy Development Corporation Limited and another, etc. Vs. Kala Singh, etc., the Apex Court considered the case of workman, who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Apex Court held that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power u/s 11A of the Industrial Disputes Act to grant relief with minor penalty. It was further held that in view of the settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent-workman with 25% back wages. It was further held that in case of proof of misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

7. Counsel for respondent No. 1 submitted that Labour Court has recorded a categorical finding that allegation levied against respondent No. 1 does not amount to misconduct and Labour Court is justified in quashing the order of punishment. Counsel for respondent No. 1 placed reliance upon the Judgment in the case of Scooters India Limited Vs. Labour Court and Others, wherein it was held that even if it is held that disciplinary enquiry was fair and lawful and its findings are not vitiated in any manner, itself would not be ground for non-interference with the order of termination of service by Labour Court. In this case, it is held that Labour Court has jurisdiction to interfere with the quantum of punishment.

8. Counsel for respondent No. 1 then submitted that alleged misconduct is not the misconduct within the meaning of Clause 12(d), (e) and (f) of Standard Standing Orders. Counsel for respondent then referred to the judgment in the case of U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, . In this case, it is held that u/s 11A of Industrial Disputes Act, High Court can interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings if penalty shocks conscience of the Court. Counsel for the respondent submitted that the findings of the

Labour Court that considering the social status of the respondent No. 1 from which he comes, use of such language cannot be termed as abusing in filthy language.

9. On perusal of the order, Annexure P/2, passed by the Labour Court, the management has raised a specific plea that after considering the previous misconduct committed by workman penalty of punishment is imposed. His previous record is also not good. It is alleged against the respondent No. 1 that he has behaved in a disorderly manner and has also lifted a stick to assault the foreman. Respondent has been charged earlier for committing misconduct and has been punished. Labour Court has held that the charge of misconduct on account of misbehaviour with superior officer is levied but the respondent has not attacked any senior officer and the language used by him by abusing his superior officer is improper but considering social strata of society to which respondent No. 1, belongs such language cannot be termed as abusive, therefore, the punishment is excessive. The finding that using abusive language is not a misconduct is contrary to law laid down by Division Bench in the case of Manager, Central India Flour Mills (supra).

10. It is to be examined whether punishment imposed upon the respondent No. 1 is shockingly disproportionate?

11. In the case of U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, , the question referred was whether punishment imposed is "shockingly disproportionate".

12. Nowadays, in the industries discipline of workmen is necessary. On finding that workman has abused his superior officers is nothing but gross indiscipline and amounts to misconduct, as held in the case of Manager, Central India Flour Mills (supra). In such case, punishment of dismissal cannot be held to be shockingly disproportionate.

13. In the light of Division Bench judgment in the case of Manager, Central India Flour Mills (supra), abusing filthily the superior officer amounts to misconduct. In such cases interference by Labour Court and Industrial Court with quantum of punishment is improper. In the result, the orders passed by Labour Court and Industrial Court, Annexures P/2 and P/1, respectively, are quashed and that of disciplinary authority dismissing respondent No. 1 from service is restored.

14. Petition succeeds and is allowed without any order as to costs.