

(1998) 10 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3378 of 1996

Haryana State Electricity Board

APPELLANT

Vs

Presiding Officer, Labour Court, Ambala and Another

RESPONDENT

Date of Decision : 06-10-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 11

Citation : (1999) 121 PLR 11

Hon'ble Judges : N.C. Khichi, J; Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : H.S. Gill, for the Appellant; Ashwani Talwar, for the Respondent

Judgement

V.S. Aggarwal, J.—By this common judgment both the Civil Writ petition Nos. 3378 and 6178 of 1996 can conveniently be disposed of together. Both the writ petitions arise out of the award passed by the Labour Court, Ambala dated 8.9.1995. By virtue of the impugned award, learned Presiding Officer, Labour Court, Ambala, directed the Haryana State Electricity Board, for short "the petitioner" to give fresh appointment to Ashok Kumar respondent on the same terms and conditions on which he was working before the order for his removal from service was passed.

2. The relevant facts are that Ashok Kumar respondent was appointed as Upper Division Clerk with the petitioner vide order dated 7.2.1973. In the year 1985, he was working in the office of Chief Engineer/Workshop, H. S. E. B. Dhulkot. He was transferred to the office of Chief Engineer, Chandigarh, vide order dated 18.6.1985. Instead of joining duty at Chandigarh, respondent in the first instance applied for commuted leave for 33 days from 18.6.1985 to 20.7.1985 along with a medical certificate from a private medical practitioner. He again sent a telegram which was received on 25.7.1985 for extension of leave without mentioning therein the period upto which extension of leave was required. Later on, he sent a medical certificate for 63 days leave from 20.7.1985 to 20.9.1985. It was received in the office of the petitioner on 5.9.1985. The respondent was directed

telegraphically to resume duty at once. Instead, he sent another medical certificate for extension of leave by another 153 days. In order to verify the actual position, petitioner sent a letter to the respondent to appear before the Chief Medical Officer, Haryana State Electricity Board Health Centre, Chandigarh. The respondent did not turn up for medical examination.

3. Keeping in view the above circumstances, a departmental enquiry was initiated against the respondent for having absented himself from duty unauthorisedly w.e.f. 18.6.1985 onwards. A charge-sheet was issued to him. Sh. P. C. Mehra, Chief Auditor, HSEB, Chandigarh, was appointed as Enquiry Officer. Full opportunity was given to the respondent to defend himself. Ultimately, the Enquiry Officer submitted his report. It was held that the respondent wilfully absented himself from duty. After the receipt of the enquiry report, Secretary, Haryana State Electricity Board, issued a show cause notice to the respondent for removing him from service. The punishing authority did not agree with the recommendations of the Enquiry Officer. However, after show cause notice had been considered on 15.4.1987, a penalty of removal of respondent from service was imposed.

4. The respondent raised an industrial dispute which was referred to the Presiding Officer, Labour Court, Ambala. The Labour Court recorded the evidence and came to the conclusion that the inquiry was proper and fair. He found no ground to interfere but acted u/s 11A of the Industrial Disputes Act and thereupon passed the following order :-

"..... The assertions of the workman that he could not travel from Ambala to Chandigarh on account of his illness is unsubstantiated on the record. I am, thus, of the clear opinion that a fair and proper enquiry was conducted in this case and the impugned order of removal from service Ex.M-29 was validly passed.

However, keeping in view of the case facts and circumstances of the case, the penalty of dismissal from service is too harsh a punishment. It would, thus, be in the fitness of the things to invoke the provisions of Section 11A of the Act. Although the punishment of dismissal is perfectly valid and legal, yet having regard to the totality of facts and circumstances of the case, it would be just and proper to direct the management to give fresh appointment of U.D.C. to the workman on the same terms and conditions upon which he was working prior to the passing of orders of removal from service. The findings of this issue is, therefore, given in favour of the workman in this manner."

5. Aggrieved by the same, both the petitioner and respondent filed separate writ petitions.

6. During the course of arguments only one question was agitated as to whether the Labour Court was justified in directing that fresh appointment be given to the respondent-workman as already referred to above. Learned counsel on behalf of the petitioner contended that once the Labour Court had come to the conclusion that fair enquiry was held and dismissal was proper, the discretion so exercised

could not have been so exercised and, in fact, is arbitrary.

7. To appreciate the said argument, reference can well be made to Section 11A of the Industrial Disputes Act, 1947 which reads as under :-

"11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge of workmen - where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

8. It is obvious from the aforesaid that u/s 11A of the Industrial Disputes Act, the Labour Court can exercise its jurisdiction if it is satisfied that the order of dismissal was not justified. In that event, he can pass the order of reinstatement on such terms and conditions as may be deemed appropriate. The Labour Court in this regard had the discretion as to what penalty in the circumstances of the case should be meted out to the guilty workman. Unless the discretion exercised by the Labour Court is perverse or illegal, this Court will not interfere in normal circumstances.

9. The attention of the Court was drawn to the decision of the Supreme Court in the case of *The East India Hotels Vs. Their Workmen and Others*, . But, indeed, the petitioner cannot take any advantage of the cited case because this pertained to a dispute that had arisen before Section 11A was inserted in the Industrial Disputes Act, 1947 w.e.f. 15.12.1971. In fact, Supreme Court noticed that Section 11A is not retrospective and the earlier disputes had to be governed as the law stood before Section 11A was inserted in the Industrial Disputes Act, 1947.

10. Consistently this Court had held that under S. 11A of the Industrial Disputes Act, Labour Court can, indeed, interfere regarding the punishment awarded if termination of services is unjustified. This view was expressed by this Court in the case of *Haryana Agro Industries Corpn. Ltd. v. The Chief Commissioner, U.T. Chandigarh & Ors.* 1981 (1) SLR. 383 and also by the Supreme Court in the case of *Management of Hindustan Machine Tools Ltd., Bangalore Vs. Mohd. Usman and Another*, .

11. However, on behalf of the petitioner, attention of this Court was being drawn

to a Division Bench decision of this Court in the case of Shri Mahipal Sharma Vs. Escorts Limited (Tractor Division), . The Division Bench while deciding the Letters Patent Appeal held as under :-

"The position of law as laid down in the aforesaid cases cited by Mr. Bhandari regarding the jurisdiction of the Labour Court to interfere u/s 11A of the Act 1947 is quite settled. However, it is to be noted that before the Labour Court can interfere u/s 11A of the Act 1947 he has to come to the finding that the punishment awarded to the workman is unjustified, unfair and not commensurate to the misconduct found proved against him. According to us, the facts of the instant case are clearly distinguishable. The Labour Court has recorded a categorical and specific finding about the punishment being just and proper. Once the Labour Court has found the punishment to be just and proper, he could not invoke the jurisdiction under Sec. 11-A of the Act 1947 and interfere with the punishment awarded by the Employer".

12. Can the petitioner take advantage of the ratio of that case ? The answer has to be in the negative. A reading of the award of the Labour Court itself shows that the language used by the learned Labour Court is not systematic. All that he wanted was that fair and proper inquiry was held but penalty of dismissal from service was too harsh under the circumstances. This was obvious so because the respondent had been absenting and sending medical certificate. One line recorded by the Labour Court "although the punishment of dismissal is perfectly valid" seemingly has been added as superfluous because reading of the award as a whole shows that in sequence it was held that inquiry was just and proper but dismissal from service is too harsh. Under the circumstances, in this backdrop it is obvious that it cannot be termed that the Labour Court had held that dismissal was proper. Once the Labour Court has exercised the discretion in this regard that dismissal is improper, this Court would be slow to interfere and particularly when it is not shown that the discretion is totally arbitrary.

13. Both the civil writ petitions, therefore, being without merit must fail and are dismissed. Petition dismissed.