
(2006) 08 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4167 of 1985

High Polymer Laboratories	Vs	APPELLANT
Jagdish Chand and Another		RESPONDENT

Date of Decision : 11-08-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 2A

Citation : (2006) 144 PLR 445

Hon'ble Judges : Arvind Kumar, J

Bench : Single Bench

Advocate : Sudhir Mittal, for the Appellant;

Final Decision : Allowed

Judgement

Arvind Kumar, J.—The petitioner-management has sought quashing of award dated 15.6.1985 passed by respondent No. 2.

2. The facts of the case are that respondent No. 1 was an employee of the petitioner-management. On 6.8.1982, when Factory Supervisor Sh. Surinder Kumar Juneja, asked the petitioner and other workers to unload the acid tanker, to which they refused. They also prevented other workers carrying out the task of empty the acid tanker. Resultantly, the management had to pay the demurrage charges of night halt of the truck. Therefore, on account of disobeying the orders of his superior, the respondent-workman was suspended w.e.f. 7.8.1982 and was served with a charge-sheet dated 8.8.1982. He filed a reply to the charge-sheet, which was not found satisfactory. Accordingly, an enquiry officer was appointed, who conducted the enquiry against the petitioner. The enquiry officer, on the basis of material placed before him, held the charges contained in the charge-sheet dated 8.8.1992 proved against the petitioner. Resultantly, the petitioner-management issued a show cause notice to respondent No. 1 and ultimately terminated his service.

3. Respondent No. 1 challenged his termination by serving a demand notice u/s

2-A of the Industrial Disputes Act, 1947 (for brevity the Act) upon the petitioner-management submitting therein that the enquiry against him was not conducted as per the principles of natural justice and that he has been victimized on account of his union activities. He prayed for his re-instatement with continuity of service and full back wages. The matter was referred to the Labour Court. Respondent No. 1 filed the claim statement, which was contested by the petitioner-management by submitting a reply. Their stand was that the enquiry was conducted fairly and properly, within the four corners of principles of natural justice and that the petitioner is gainfully employed. Thus, dismissal of the claim was sought.

4. The Labour Court vide the impugned award dated 1.5.1985 held that the enquiry was conducted fairly and properly and that respondent No. 1 was guilty of mis-conduct. But finding the dismissal of the workman disproportionate to the charges proved against him, instead of ordering his re-instatement, directed the petitioner-management to pay lump-sum compensation equivalent to five years wages, which the workman was drawing prior to his dismissal.

5. Dissatisfied with the same the petitioner-management has preferred the instant petition. It is apt to mention here that the respondent-workman has not preferred any writ against the award dated 1.5.1985.

6. I have learned Counsel for the petitioner and have gone through the case file carefully.

7. The only argument advanced by the counsel for the petitioner is that the Labour Court should not have exercised its jurisdiction u/s 11-A of the Act. There is a force in this contention. It is no doubt true that after introduction of Section 11-A of the Act certain amount of discretion is vested with the Labour Court/ Industrial Tribunal with the quantum of punishment awarded by the Management where punishment awarded is shockingly disproportionate to the charges proved. In the instant case there is proved gross-mis-conduct and an act of insubordination by the respondent-workman. This has also been held by the Labour Court. Discipline at a work place in an organization like the employer herein is a sine quo non for the efficient working of the organization. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charges proved. In *Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others*, , it has been observed that the interference at the hands of the Tribunal should be *inter alia* on arriving at a finding that no reasonable person could inflict such punishment. It is not the case here. As discussed above, the Labour Court itself opined that it is a case of gross misconduct and insubordination. No doubt there is no evidence that previously also the respondent-workman had misconducted in any manner, but now it stands settled by the Hon"ble Supreme Court in *Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate*, , by observing that first misconduct again is no ground to condone the misconduct. As observed earlier, the Labour

Court has exceeded its jurisdiction while exercising the powers u/s 11-A of the Act while awarding compensation to the workman, equivalent to his five years wages. Person like the respondent-workman who is guilty of gross misconduct must be shown the door empty handed.

8. In view of the above, I am of the considered opinion that the respondent-workman deserves no relief. Accordingly, the present petition is allowed. Impugned award dated 1.5.1985 passed by respondent No. 2 is quashed. The claim of the respondent No. 1-workman stands dismissed. It is made clear that pursuant to the award dated 1.5.1985, if any payment has been made to the respondent-workman, the petitioner shall be at liberty to recover the same from the workman, as per law. However, there shall be no order as to the costs.