

(2000) 01 DEL CK 0046

In the Delhi High Court

Case No : Civil Writ Petition No. 5406 of 1997

India Tourism Development Centre

APPELLANT

Vs

Presiding Officer, Labour Court X and Others

RESPONDENT

Date of Decision : 14-01-2000

Acts Referred:

Citation : (2000) 2 AD 10 : (2000) 53 DRJ 10 : (2000) 85 FLR 244 : (2000) 2 LLJ 152

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. D.S. Sidhu and Ms. Maldeep Sidhu, for the Appellant; Mr. Umesh Sharma and Ms. Sunita Bhardwaj Advs., for the Respondent

Judgement

A.K. Sikri, J.—Respondent No. 2 (hereinafter referred to as workman, for short) was employed as Masalchi in the Kitchen of Ashoka Hotel (hereinafter referred to as Management, for short) which is managed by the petitioner -ITDC. Chargesheet was issued to the workman in March 1984 alleging that workman remained absent unauthorisedly. Departmental enquiry was held as per which he was found guilty of the charges framed against him and resultantly his services were terminated by the management vide order dated 13th June, 1984. Workman raised industrial dispute challenging his termination which was referred for adjudication to the Labour Court (respondent No. 1) with the following terms of reference:

"Whether the termination of services of Shri Boman is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?"

2. On receipt of reference the Labour Court registered it as ID No. 275/96 (later re-numbered as ID 1614/95). The workman filed his statement of claim making averments to the effect that he was employed with the management on 17th May, 1975 as a utility worker (Masalchi) and his services were terminated by the management w.e.f. 13th June, 1984 after serving a chargesheet and holding an

enquiry. He challenged the finding of enquiry officer submitting that he was not given full and fair opportunity in the enquiry proceeding conducted against him and impugned order of dismissal was unjustified and mala fide and by way of victimisation. He also submitted that the punishment awarded to him was highly disproportionate to the allegations leveled against him. Written statement was filed on behalf of the Management contesting the claim of the workman stating that he was given full opportunity in the enquiry proceedings conducted against him wherein he was also assisted by a colleague and he has himself signed the enquiry proceedings without any protest. It was further submitted that findings of enquiry officer were based on evidence produced before him. The enquiry officer had given due consideration to the Explanation given by the workman as well as the evidence produced by him. The disciplinary authority was fully conscious of the human aspect by considering the past record also when the concerned workman had been awarded the punishment of stoppage of increment which did not bring any improvement in the conduct of the workman, the termination had to be resorted to. Various allegations made in the statement of claim were denied. Workman file rejoinder thereto reiterating the averment made in the statement of claim. After the pleadings were completed the Labour Court framed following issues on 7th September, 1987:(i) according to terms of reference; and (ii) relief.

3. On 4th January, 1988 an additional issue as regards fairness and validity of enquiry was framed which was treated as preliminary issue. Evidence was led on this preliminary issue and arguments heard and thereafter vide order dated 20th March, 1990 this issue was decided in favor of workman and the domestic enquiry conducted against him was set aside. However, since the Management had sought permission of the Court for adducing evidence in the Court to substantiate the allegation against the workman, an opportunity was given to them and workman was also allowed to lead his evidence. One witness was examined on behalf of the Management. Workman also examined himself as well as one more witness. Thereafter arguments were heard and the impugned award dated 22nd March, 1997 was passed, setting aside the punishment of dismissal awarded to the workman and reinstating him with full back wages and continuity of service. It is against this award that the present writ petition has been filed by the management.

4. A perusal of the award would show that the management has been able to successfully prove the charges leveled against the workman by adducing evidence before the labour Court. This is finding recorded by Labour Court. This is finding recorded by Labour Court itself as could be seen from the following observation made by it in the impugned award:

"MW 2 Sh. M. Andrews has testified that he was working as a Head Time Keeper with the management upto 1-8-90 and he has prepared the record of absence of the workman Sh. Boman from 1.1.83 to December, 1983 on the basis of the record maintained in the time office. It is testified by MW 2 Sh. M. Andrews that

workman was absent for 62 days without any prior sanction of leave, the witness has also testified that only twice application was given by the workman once on 18-10-83 from 31.7.83 to 9.8.83. It is also testified by MW 2 Sh. M. Andrews that both time the leave was not sanctioned to the workman and for other absence, the workman did not submit any application whatsoever. This part of the testimony of MW 2 Sh. M. Andrews has not been challenged on behalf of the workman as the workman was cross-examined only on the point whether any inquiry to the workman whenever the leave applied for by the workman is not sanctioned or refused by the management. Thus the workman has in a way admitted that he has remained absent without any prior sanction. The application was submitted by the workman only twice for about 15 days whereas he has remained absent from his duties for 62 days in the year 1983. Sh. Jag Pal Singh who has testified that he was working as Kit Supervisor in Ashoka Hotel since the year 1980, has also testified that in the case pertaining to other workmen who had remained absent for longer period than the workman Boman, the management had not taken action and allowed those workmen to remain in the service of the management. The witness has named workman Mehak Singh and Yashpal who falls under the category of remaining absent unauthorisedly to whom chargesheet was also issued but no such action was taken as against the workman Boman. Thus the allegations as regard unauthorised absence against the workman stands proved .?"

5. However, after holding that the charge against the workman stands proved the Labour Court proceeded to examine the question as to whether the punishment of dismissal awarded to the workman is justified in view of the misconduct alleged against him and came to the conclusion that punishment of dismissal awarded to the workman was bit harsh and disproportionate to the allegations leveled against him. The discussion on this aspect, in the award, reads as under:

"Testimony of WW 2 Sh. Jag Pal Singh to the effect that management had been lenient in respect of other workmen who also absented from their duties and had been relatively harsh on the workman, has not been challenged or disputed by the management in cross-examination of WW 2 and in such circumstances, I feel that the punishment of dismissal awarded to the workman Sh. Boman in a bit harsh and disproportionate to the allegations against him particularly in view of the fact that even after receiving the applications from the workman, he was never intimated by the management that the applications submitted by him had been rejected by the management."

6. After recording that the punishment was a bit harsh and disproportionate to the allegations the Labour Court proceeded to set aside the punishment of dismissal and gave the award to the effect that the workman was entitled to reinstatement to his job Along with full back wages and continuity of service. The reason for adopting this course are contained in the following part of the award:

"The punishment of dismissal thus awarded to the workman by the management is set aside, and it is held termination of the workman by the management was

unjustified and he is entitled to reinstatement to his job Along with full back wages and continuity of services as it is testified by him that he has remained unemployed since the termination of his services by the management. The reference is answered accordingly and award made."

7. Thus the only question to be decided in the present writ petition is as to whether the Labour Court was right in holding that punishment of dismissal awarded to the workman was harsh and disproportionate and could give the relief of reinstatement with full back wages and continuity of service to the workman.

8. Challenging this part of the award Mr. K.S.Sidhu, learned counsel appearing on behalf of the petitioner-Management argued that once the charge of unauthorised absence was proved as per the findings record by the Labour Court itself, it could not be treated as a charge which was not serious. He further argued that the Labour Court misdirected itself in comparing the case of the petitioner with other workman in whose respect the Management had allegedly taken lenient view in similar circumstances inasmuch as, in the case of the workman the charge of unauthorised absence as contained in the chargesheet was not the first instance as the workman remained unauthorisedly absent on previous occasion. On 26th October, 1978 he was given written warning for not attending his duty properly. Again on 14th July, 1981 workman was given a chargesheet for remaining absent without leave unauthorisedly for 68 days and after the enquiry punishment of stoppage of two annual increments was imposed upon the workman vide order dated 31st May, 1982. Notwithstanding this punishment, within two years thereafter the workman again absented himself for which, chargesheet was given in March 1984 which is the subject matter of the present litigation. Therefore, argued Mr. Sidhu, the case of the workman could not be compared with other workers and it was proper and justified for the disciplinary authority to take into consideration the previous conduct of the workman while awarding him the punishment of dismissal on the basis of present chargesheet. Therefore, according to him, Labour Court was not right in its approach.

9. As against the aforesaid submission of the Management, learned counsel for the workman contended that the Labour Court had exercised its discretion u/s 11-A of the Industrial Disputes Act in coming to the conclusion that the punishment imposed was disproportionate to the charges framed against the workman and this Court should not interfere with the exercise of such discretion in the instant petition filed under Article 226 of the Constitution of India. It was further argued that the Labour Court rightly recorded that although the workman had given his leave application, the Management did not convey any decision on the said leave application although it was mandatory on the part of the Management to do so as per the provisions of para 22 of the Certified Standing Orders applicable to the workman. Attention was also drawn to para 8 of the Certified Standing Orders to buttress this submission. Thus, according to the counsel for workman" when the

workman was not conveyed any orders on his leave application and when other similarly situated persons who also remained absent unauthorisedly were let off the extreme punishment of dismissal could not have been inflicted upon the workman by the management and these considerations weighed with the Labour Court in holding that the punishment was disproportionate and harsh.

10. I have given my due consideration to the respective arguments by both the counsel and have also gone through the record of the case. A perusal of the award shows, as noticed above, that the charge of remaining absent from duties for 62 days in the year 1983 against the workman stands proved. It has to be borne in mind at this juncture that out these 62 days workman submitted application only twice for about 15 days whereas he had remained absent from duty for 62 days in the year 1983. This is so held by the Labour Court itself which is clear from above.

11. While interfering with the punishment of dismissal the Labour Court has been influenced by the following two factors:

(a) Management has been lenient in respect of other workmen who also absented from their duties;

(b) Even after receiving application for leave from the Workman he was never informed/intimated by the Management that application submitted by him had been rejected by the Management.

I am afraid, both the reasons given by the Labour Court are misplaced.

12. While observing that Management had been lenient in respect of the other workers who had also absented from duties, Labour Court ignored the relevant aspect of this case, namely, the disciplinary authority had, while imposing the punishment upon the workmen, took into consideration previous conduct of the workman. He was once given written warning for not attending his duties properly and second time punishment of stoppage of two annual increments was imposed upon him for similar type of charge namely unauthorised absence from duties. A perusal of the written statement filed by the Management before the Labour Court shows the following specific averments:

"The disciplinary authority was fully conscious of the human aspect by considering the past record also when the concerned workman had been awarded the punishment of stoppage of increment did not bring any improvement in the conduct of the workman, the termination had to be resorted to."

13. This averment of the Management in their written statement stands unrebutted in the rejoinder contained in para V and Vi, filed by the workman to the same. A perusal of para V and Vi of the rejoinder would show that although other allegations contained in these sub-paras of the written statement are replied to, there is a stoic silence maintained about these allegations. Thus, one can infer that the workman admitted regarding award of punishment given

earlier. It may further be mentioned that even in the writ petition the Management had made specific averment regarding the previous two punishment and infact also filed the documents to this effect. There is a vague denial of the punishment issued earlier and interestingly in respect of documents filed by the Management it is also stated that the same are misleading and "not related to the present dispute hence denied". Otherwise the genuineness of these documents is not questioned. In any case as noticed above, specific averment was made in the written statement filed before the Labour Court regarding the past conduct of the workman which was not denied by the workman in the rejoinder. This stand of the Management that disciplinary authority took into consideration the past record while awarding the punishment of dismissal Therefore stands established. In view of this position Labour Court was not right in comparing the case of the workman with other workers as the case of the workman stand on different footing. Such unauthorised absence in the case of workman also was dealt with leniently for the first time. But serious view is taken when the workman repeated the same act again. It was open to the disciplinary authority to take into consideration the past conduct of the workman while deciding the quantum of punishment in the instant case.

14. Even the second reason given by the Labour Court is not correct. What is stated is that even after receiving the applications from the workman he was not intimated by the Management that his application were rejected. However, while observing so the Labour Court has totally ignored the very relevant aspect of the matter i.e. this workman although remained absent from duties for 62 days in the year 1983 but he had submitted application for 15 days only. This is so recorded by the Labour Court itself in the earlier part of the award which reads as under:

"Thus, the workman has in a way admitted that he has remained absent without any prior sanction. The application was submitted by the workman only twice for about 15 days whereas he has remained absent from his duties for 62 days in the year 1983."

15. Thus as per the impugned award itself, the application which the workman submitted was only for 15 days. No doubt Management should have conveyed its decision rejection this application as per the standing orders. However, even if that is not done one cannot ignore that for remaining 47 days of unauthorised absence there was no application at all preferred by the workman. Thus even if the decision to reject the application for grant of 15 days leave was not conveyed, it would not improve the case of the workman.

16. Therefore, I am of the view that the Labour Court took support of unfounded grounds in holding that punishment imposed upon the workman was bit harsh or disproportionate.

17. There is yet another aspect of the matter which has to be highlighted at this stage. Labour Court has committed an error even in granting the relief while

setting aside the punishment of dismissal. Although the Labour Court holds the charges as proved against the workman but while concluding (although erroneously) that the punishment of dismissal was bit harsh and disproportionate the workman is given the relief of reinstatement with full back wages. Effect of giving this relief is to let off the workman completely with no order of punishment even when the charges against the workman stand proved. This is clearly an erroneous approach. No doubt u/s. 11-A of the Industrial Disputes Act, Labour Court has power to set aside the order of discharge or dismissal and direct reinstatement after being satisfied that order of dismissal or discharge was not justified. Further Labour Court can exercise its discretion u/s 11-A of the Industrial Disputes Act while examining the question as to whether the punishment imposed upon the workman by the employer commensurate with the gravity of the act of misconduct and can impose lesser punishment etc. However, such discretion has to be exercised judiciously and on the basis of relevant considerations. The Labour Court, in the instant case, was influenced by wrong considerations and ignored relevant consideration in the process, namely, the past conduct.

18. What is proved against the workman, as per chargesheet, is 62 days of unauthorised absence in the year 1983 out of which he submitted application for leave for only 15 days which too was rejected (although rejection was not conveyed to the workman) it has also come on record that on previous occasion the workman had remained absent unauthorisedly for 68 days for which he was imposed punishment of stoppage of two annual increments and on 26th October 1978 written warning for not attending his duties properly was administered to him. This it is established on record that the workman had been a habitual absentee and did not even care to submit leave application. Whether a particular misconduct is severe or otherwise would depend on the facts of each particular case. No hard or fast rule can be laid down to gauge the severity or triviality of misconduct. A misconduct which may not be considered in certain circumstances to be serious, can be serious in another set of circumstances. It cannot be ignored that the workman was working in a Five Star Hotel and the standard of conduct which is expected of such a workman is a high degree. Such unauthorised absence that too without intimation cause unnecessary inconvenience to the Management, keeping in view the nature of employment of the workman, namely, working as Masalchi in a kitchen in five star hotel.

19. In Basu Deba Das Vs. M.R. Bhope and Another, this is what was observed by the Bombay High Court:

"Whether a particular misconduct is severe or otherwise would depend upon the facts of each particular case. No hard and fast rule can be laid down to gauge the severity or triviality of the misconduct. A misconduct which may not be viewed, in certain circumstances, to be serious but it can be serious in another set of circumstances. A code of conduct which is expected of a workman varies from place to place. A standard of conduct expected of an employee, say in respect of

a road side Dhaba or a country liquor bar will not be the same as is expected of a worker serving in a Five-Star hotel or in a permit room located in such a hotel. If the very misconduct were to have been committed in a road side Dhaba or a country liquor bar, I may have been persuaded to take a view that the punishment inflicted is on the severe side. In the instant case we are concerned with the second respondent who is running a Five Star Hotel. The hotel has clientele which belongs to certain category or class of society. Clientele pay exorbitant amounts to avail of the facilities provided by the Five Star Hotel. It is, Therefore, natural that certain level of code of conduct is expected of the staff employed by such establishments."

20. Further Labour Court can exercise its discretion u/s 11-A of the Industrial Disputes Act while examining the question as to whether the punishment imposed upon the workman by the employer commensurate with the gravity of the act of misconduct and can impose lesser punishment etc. However, such discretion has to be exercised judiciously and on the basis of relevant considerations. The Labour Court, in the instant case, was influenced by wrong considerations and ignored relevant consideration in the process, namely, the past conduct.

21. In Lakshmi Machine Works Ltd. Vs. The Presiding Officer, Labour Court and Another, the workman engaged in production of textiles spinning machinery was found sleeping behind the card board-sheet spread on the floor. In the course of enquiry, his attitude was recalcitrant. A Division Bench of the Madras High Court held that sleeping on duty hours by itself might look a minor misconduct but when viewed in association with series of sot her acts of misconduct committed by him in the past, the punishment of dismissal was not unjustified.

22. Since the charge leveled against the workman is serious and disciplinary authority had, while imposing the punishment of dismissal taken into consideration the past conduct of the workman, the order of dismissal cannot be held to be unjustified. The Labour Court was, Therefore, not right in holding the punishment to be harsh or bit disproportionate and directing reinstatement in service with full back wages. Accordingly, the writ petition succeeds. Rule is made absolute. Impugned award dated 22nd March, 1997 passed by the Labour Court in ID. 1614/95 is set aside and it is held that workman is not entitled to any relief.

23. There shall be no order as to costs.