

(2010) 05 CAL CK 0087

In the Calcutta High Court

Case No : Writ Petition No. 4174 (W) of 1999

Levcon Instruments Pvt. Ltd.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2010) 126 FLR 375

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Partha Sarathi Sengupta, for the Appellant; Debjani Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.—This writ application is directed against an award dated March 5, 1998 passed by the learned Judge First Industrial Tribunal, West Bengal in case No. VIII-283 of 1984 holding that the punishment of dismissal of the respondent No. 3 from service was disproportionate and directing his reinstatement in service with 25% of back wages.

2. The facts of this case in a nutshell are as under:

3. The respondent No. 3 was a workman under the petitioner No. 1. He was a member of the West Bengal Engineer Workers Union with effect from April 1, 1979. The above union submitted a charter of demand to the petitioner No. 1 on April 17, 1979. Subsequently, a charge-sheet dated May 15, 1979 was issued against the respondent No. 3. The respondent No. 3 submitted his reply to the same. An outsider was appointed as enquiry officer to conduct a domestic enquiry in the matter. He submitted enquiry report to the petitioner company. The respondent No. 3 was dismissed from the service. An industrial dispute was raised in the matter. Consequent upon the failure of conciliation proceeding the matter was referred to the industrial tribunal.

4. By an order dated January 20, 1994, the learned Tribunal held that the enquiry was not valid and proper. The petitioner company and the respondent workman produced their respective witnesses before the learned Tribunal. After conclusion of the enquiry proceeding the learned tribunal came to a finding that the detention of the Managing Director of petitioner company in the factory premises on May 3, 1979 till the arrival of the police was a result of a Gherao at the instance of the respondent No. 3 and other workmen. As a result, the learned Tribunal came to a conclusion that the respondent No. 3 was guilty of causing act of insubordination disorderly behaviour and subversive of discipline. The learned Tribunal further came to a finding that most of the charges of the charge-sheet had been duly proved by way of adducing evidence before the Tribunal. Upon further consideration of the evidences, the learned tribunal came to a conclusion that the management also had some contribution regarding the untoward incident of May 3, 1979 which took place in the factory premises of the petitioner No. 1 and held that the punishment of dismissal from service imposed upon the respondent No. 3 was disproportionate. Consequent thereupon the learned Tribunal passed an award for reinstatement of the respondent No. 3 in service with 25% of back wages. Hence this writ application.

5. It is submitted by Mr. Partha Sarathi Sengupta, learned Counsel appearing for the petitioner company, that the learned Tribunal came to a finding that the respondent No. 3 was guilty for causing act of insubordination disorderly behaviour and subversive of discipline. According to him there was no scope for the learned Tribunal under the provisions of Section 11A of the Industrial Disputes Act, 1947 to interfere with the punishment imposed upon the respondent No. 3. According to him the scope of interference of the learned Tribunal was restricted either to a case where the guilty had not been proved or in a case where the punishment was so disproportionate that the same socked the conscience of the court. It is further submitted by him that the learned Tribunal interfered with the punishment imposed upon the respondent No. 3 in absence of any of such finding and as such impugned award could not be sustained in law.

6. Reliance is placed by Mr. Sengupta on the decisions of *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, ; *Post Graduate Institute of Medical Education and Research Vs. Labour Court and Another*, ; *R.C. H. R. Mouldings (P), Ltd. v. State of Haryana and Ors.* reported in 1992 (1) LLN 675; *Managing Director, Dey Constructions Co. v. Bata Kishore Sahoo* reported in 1998 Lav.I.C. 899; *Gujrat State Road Transport Corporation v. Kachraji Motiji Parmar* reported in 1993 (1) CLR 894; *U.P. State Textile Corporation Spinning Mills Vs. State of U.P. and Others*, ; *Dharampuri District Doop. Sugar Mills v. Labour Court and Ors.* reported in 1997 LLR 509; *U.S.V. Ltd. v. Maharastra General Kamgar Union and Anr.* reported 1997 (77) FLR 309 and *Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Ltd. and Another*, .

7. On the other hand it is submitted by Mrs. Debjani Sengupta, learned Counsel appearing for the respondent No. 3, that most of the charges levelled in the charge-sheet were duly proved against the respondent No. 3 on the basis of the evidences adduced before the learned tribunal. It is further submitted that the learned Tribunal further came to a conclusion that on May 3, 1979 the atmosphere of the factory premises was not peaceful. The announcement of decision of the management suspending the payment of wages added further fuel to the fire. And the management had some contribution to the incident of Gherao of the management representatives. Therefore, according to the learned Counsel, the conclusion of the learned tribunal with regard to the disproportionate punishment was based on reasonable findings.

8. Mrs. Sengupta relied upon the decisions of A. Venkata Ramana v. Chairman, Industrial Tribunal-cum-Labour Court reported in 1196 LAB. I. C. 1895; Ram Kishan Vs. Union of India and others, ; The Depot Manager, APSRTC v. Sri Md. Masood and Ors. reported in 1992 Lab. I. C. 1354 and R.M. Parmar v. Gujarat Electricity Board reported in 1982 Lab. I.C. 1031 in support of her submissions.

9. I have heard the learned Counsels appearing for the respective parties and I have given my anxious consideration to the facts and circumstances of this case. Admittedly, by an order dated January 20, 1994 the learned tribunal held that the enquiry had not been conducted by the petitioner company validly or properly. The petitioner company and the respondent workman produced their respective witnesses before the learned tribunal. Undisputedly, the learned tribunal held that the workman was guilty of causing act of insubordination, disorderly behaviour and sub-versive of discipline. But the learned Tribunal while examining the quantum of punishment imposed upon the workman concerned, came to a finding that the punishment of dismissal of the workman from service was disproportionate to the charges which had been proved against him.

10. One of the grounds for interference of a Labour Court or Industrial Tribunal with the decision of management under the provisions of Section 11-A of the Industrial Disputes Act, 1947 is that the punishment imposed by the management is highly disproportionate to the decree of guilt of the workman concerned. The decision making process of a Labour Court or Industrial Tribunal, therefore, has to be examined on the basis of the reasons assigned therefore. In this case the Learned Tribunal took into consideration the nature of misconduct of the concerned workman which had been proved in the enquiry proceeding, the intention of the concerned workman and his general attitude while coming to a conclusion that the punishment imposed by the management was disproportionate to the decree of guilt. The learned Tribunal took into consideration the following admitted facts:

(i) Sri Arun Kumar Bhaduri, Technical director of the petitioner company used the term "Tumi" while addressing a workman on the date of the incident.

(ii) In the present case the atmosphere of the factory was not peaceful at the

material point of time.

(iii) There was an announcement of decision of the management suspending payment of wages on May 3, 1979 which added further fuel to the fire so far as the atmosphere of the factory was concerned.

(iv) The allegation of using filthy language by the workmen or physical assault of any representative of the management was not proved.

11. The above findings of the learned Tribunal were good enough for satisfaction that the order of dismissal of the respondent No. 3 was not justified or in other words the conduct of the respondent No. 3 could not be said to be of that magnitude so as to justify the punishment of dismissal of the respondent No. 3 from the service. Therefore, the above conclusion of the learned Tribunal was based on well-founded reasons.

12. There is no scope under Article 226 of the Constitution of India to interfere with an order passed by an Industrial Tribunal or a Labour Court unless the same is vitiated by fundamental flaws of miscarriage of justice, absence of legal evidence, perverse misreading of facts, error of law on the face of records, jurisdictional failure or like.

13. I do not find that the decisions of C.M.C. Hospital Emp. Union(supra), P. B. Inst. Of ME & R. Chandigarh(supra), R.C. H. R. Mouldings (P), Ltd,(supra), M/s. Dey Constructions Co.(supra), Gujrat State Road Transport Corporation(supra), U.P.S.T.C.S.M., Jhansi(supra), Dharampuri District Doop. Sugar Mills (supra), U.S. v. Ltd. (supra) and Usha Breco Mazdoor Sangh (supra) are applicable in this case in view of the distinguishable facts and circumstances of the instant case.

14. In view of the observations and made hereinabove, the impugned award need not require any interference on the hyper technical ground the learned Tribunal did not observed that the impugned punishment was "shockingly disproportionate to the degree of guild".

15. This writ application fails.

16. There will be, however, no order as to costs.

17. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.