
(2003) 05 JH CK 0054
In the Jharkhand High Court
Case No : L.P.A. No. 465 of 2002

Maheshwar Singh @ M. Singh	Vs	APPELLANT
Tata Engineering and Locomotive Company Ltd. and Another		RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

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

Citation : (2003) 4 JCR 307 : (2004) 2 LLJ 55 : (2004) 100 FLR 41

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : M.M. Banerjee and A.K. Sahani, for the Appellant; V.P. Singh and A.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. The respondent-workman in CWJC No. 3254 of 1998, is the appellant in this appeal. He was employed as the Supervisor under the first respondent-Management. After due enquiry, he was found guilty of theft of an article of the Company. He was, therefore, dismissed from service. The dispute raised by the workman was referred to the labour Court. The labour Court found that the finding in the domestic enquiry did not call for any interference. But in exercise of its jurisdiction u/s 11A of the Industrial Dispute Act the labour Court interfered with the punishment of dismissal. It ordered reinstatement of the workman with continuity of service with back wages and other consequential benefits. It withheld by way of punishment the back wages of the workman from 29.1.1987 to 7.1.1988. Feeling aggrieved by the award, the management filed the Writ Petition CWJC No. 3254/1998(R), contending that having accepted the finding at the domestic enquiry, the labour Court was not justified in interfering with the punishment. It was contended on behalf of the management that the workman was really a Supervisor, who had been given due promotions at appropriate time from Grade-4 to Grade-7, since the management found his work and conduct all along satisfactory. Since the workman was a Supervisor and he was found guilty

of theft of the article of the Company, the management lost confidence in him, the order for reinstatement passed by the labour Court was illegal and not justified. The workman contended that there was no reason to interfere with the award of the labour Court, since the labour Court had exercised Its jurisdiction u/s 11A of the Industrial Disputes Act properly and the punishment imposed on the workman was too harsh, considering the value of the article allegedly stolen by the workman. The learned Single Judge found that even though the labour Court may have power u/s 11A of the Act to interfere with the punishment in an appropriate case, in the case on hand, the labour Court was not justified in interfering with the punishment imposed by the management, especially considering the status of the workman and the nature of the charge that was proved against him. The learned Judge held that this was a case where the management's stand that it has lost confidence In the workman could justifiably be accepted and the order of termination found just. Thus the learned Single Judge interfered with that part of the award of the labour Court and quashed the Award to the extent it ordered reinstatement with back wages. Feeling aggrieved by this decision of the learned Single Judge, this appeal has been filed by the workman.

2. While the proceeding were pending, the workman had reached the age of superannuation on 27.7.1997. The learned counsel for the management submitted before us that the retrial dues amounting to Rs. 4,59,145/- inclusive of the tax deducted at source had been paid and the workman had accepted the same.

3. Learned counsel for the workman submitted that the labour Court was justified in taking note of the fact that the workman had an unblemished career of service in the company and the charge that was proved against him, related only to the alleged theft of an article worth Rs. 163/-and it was actually the case of the workman that some one being jealous of him, had planted the recovered material in his scooter without his knowledge and in that situation, the learned Single Judge was not justified in interfering with the punishment imposed by the labour Court.

4. Counsel submitted that u/s 11A of the Act, the labour Court or the Tribunal has the power to interfere with the punishment, notwithstanding the fact that there was a proper domestic enquiry and a proper finding of guilt has been recorded therein. Counsel submitted that the punishment of dismissal was too harsh and it was rightly interfered with by the labour Court. The learned Single Judge was not justified in interfering with the punishment. Counsel also submitted that the learned Judge had proceeded under the impression that he was a habitual stealer of the properties of the company, whereas the charge proved against him was only an isolated case of theft.

5. Learned counsel for the Management on the other hand submitted that this was a case where the workman was really a supervisor, and the management had a case that the investigation report specifically mentioned that the workman

was involved in committing theft habitually; and that he was caught red handed while committing theft and that in the domestic enquiry the charge against the appellant was found proved and an activity like theft of the property of the company was a grave one and this is a case where loss of confidence by the management in a supervisor can be presumed. Counsel also referred to the decision of the Supreme Court in *U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others*, and pointed out that in a case of misappropriation or breach of trust, reinstatement could not be ordered. Counsel also cited decisions to show that the value of the subject matter of theft was not a relevant criteria and it all depended upon the circumstances of the case. Counsel further submitted that the learned Single Judge has exercised his discretionary jurisdiction in interfering with that part of the Award made by the labour Court rightly and there is no ground for interfering with the decision of the learned Single Judge.

6. We find that the workman was working as a Supervisor in the respondent-Company. He was, therefore, holding a position of some trust in the Company. He was found guilty of possessing an article of the Company and it was found that it was stolen by him. In such a situation, when the management pleads that it has lost confidence in him, it cannot be said that the stand of the management is irrational or baseless. The labour Court held that the punishment of dismissal is too harsh and disproportionate to the charge proved. The labour Court interfered with the punishment only on the ground of the value of the article that was stolen and on the basis that the workman had an earlier unblemished career of service. In the circumstances obtaining, we are of the view that the labour Court was incorrect in interfering with the punishment awarded. It can be said that the labour Court has not properly exercised its jurisdiction u/s 11A of the Act on the facts and in the circumstances of the case. It was in that situation that the learned Single Judge interfered with the punishment imposed. No doubt, the decision referred to by the learned Single Judge was a case where the charge was one of habitual dishonesty. This fact is not controverted. The fact remains that the workman, had been working as a supervisor, and was found guilty of clandestinely removing an article of employer. Thus, the plea that the management has lost confidence in him has to be found acceptable. In that situation, we find that the decision of the Supreme Court, relied upon by learned counsel for the management supports the course adopted by the learned Single Judge in interfering with the award to the extent that it ordered reinstatement of the workman with back wages. On the whole, we are not satisfied that any interference with the decision of the learned Single Judge is called for.

7. Thus while we are inclined to dismiss this appeal, taking note of the fact that the workman has already received his retiral benefits, amounting to Rs. 4,59,154/- but has lost some service, we feel that he is at least entitled to the amount which he has incurred as expenses in fighting this litigation in this Court as well as in the labour Court. In that view, we direct the management to pay the workman a sum of Rs. 25,000/- as costs towards his expenses for having

fought the litigation before the labour Court and this Court.

8. This appeal is, therefore, dismissed with a direction to the management to pay a sum of Rs. 25,000/- as costs to the workman for meeting his expenses in prosecuting the litigation before the labour Court and this Court. This cost will be paid by the management to the workman within three months from the date of receipt or production of a copy of this judgment by the workman. The workman is directed to approach the management to receive the amount, which has been awarded by way of costs of this proceeding.