
(2009) 09 KL CK 0019
In the High Court Of Kerala
Case No : Writ Petition (C) No. 1185 of 2005

Manager, Lahai Estate

APPELLANT

Vs

President and Others

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 11(A)

Citation : (2009) 09 KL CK 0019

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : E.K. Nandakumar, A.K. Jayasankar Nambiar and K. John Mathai, for the Appellant; K.R.B. Kaimal, for 3rd Respondent, for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon, J.—Ext. P-1 Award passed by the Labour Court, Kollam ordering reinstatement of the additional 3rd Respondent in service of the Petitioner/Management with back wages is the issue involved in this Writ Petition.

2. The sequence of events is as follows: The additional 3rd Respondent (hereinafter referred as "Worker") was a rubber tapper engaged by the Management in their estate. According to the Management, she committed theft of 2 Kgs. of dried latex and 200 gms. of freshly collected rubber from the estate; which was recovered from her residence, pursuant to the search conducted at 4.30 p.m. on 20-6-1990, when the room was checked by the Field Officer in the presence of Assistant Manager and Assistant Field Officer, leading to the disciplinary proceedings, issuing charge-sheet and conducting enquiry in this regard. The misconduct on the part of the worker also led to a criminal case filed before the concerned Magistrate's Court. Pursuant to the enquiry, the delinquent employee was found as guilty on proving the charges levelled against her and she was dismissed from service w.e.f. 17-8-1990.

3. Subsequently, as per judgment dated 15-6-1992 in CC 329 of 1990, the

Judicial Magistrate of First Class, Ranni acquitted the accused (Worker) u/s 248(1) of the Code of Civil Procedure, holding that the prosecution had failed to prove the case. The Worker represented through the Union had raised an industrial dispute, which was referred to be adjudicated by the second Respondent/Labour Court, pursuant to which, it was numbered as ID 84 of 1994, to decide the matter as to whether the dismissal of Smt. Janamma (concerned worker) was justifiable.

4. On completion of the pleadings from both the sides, evidence was let in by the Management availing the very first opportunity to have their action justified; particularly since the "enquiry file" was not produced before the Labour Court. Two witnesses were examined from the part of the Management as M.Ws. 1 and 2, while the Worker herself got examined as W.W. 1 and produced a certified copy of judgment of the concerned Magistrate's Court acquitting her, as Ext. W-1. The second Respondent, on conclusion of the evidence observed that, the evidence let in before the Labour Court was much less, when compared to the evidence let in before the Criminal Court and accordingly, it was held that the charges levelled against the delinquent employee were not proved. The punishment of dismissal were interfered with and the Worker was directed to be reinstated with back wages and all other attendant benefits w.e.f. 3-11-1993, which in turn is subjected to challenge from the part of the Management.

5. The learned Counsel appearing for the Management submits that, there is absolutely no discussion of the evidence adduced before the second Respondent/Labour Court, while passing Ext. P-1 Award. The learned Counsel also referred to the depositions of witnesses concerned (produced as Exts. P-5 to P-7) and placed reliance on the admission made from the part of the Worker, when examined as W.W. 1, conceding that the incriminating materials forming subject-matter of the alleged theft were recovered from her premises, though according to her, it was not brought in by her. The learned Counsel further referred to "17" other specific instances of imposing various punishments upon the Worker, as narrated in paragraph 2 of the Writ Petition pointing out that, all such instances were after conducting proper domestic enquiry. It is also brought to the notice of this Court that, in view of a similar misconduct, involving theft of scrap rubber from the estate on 26-11-1977, she had been dismissed from the service and subsequently, taking a lenient view, was reinstated on 22-7-1979. It is also brought to light that, the concerned Worker was suspended from the service on several occasions as a measure of punishment, as provided under the standing orders, and that she was "warned" about 9 times. The above specific instances of insinuation have not been rebutted neither from the part of the first Respondent Union nor from the part of the additional 3rd Respondent/Worker herself and as such, it is to be presumed that the averments raised by the Management in this regard are quite correct and sustainable, particularly, in view of the fact that the unrebutted pleadings are liable to be treated as admissions.

6. The learned Counsel appearing for the additional third Respondent/Worker

submits that, she belongs to the lowest strata of the society; that she is innocent and Ext. P-1 Award is not liable to be interfered under any circumstance. The learned Counsel also made reference to the case put forward by the said Worker that the search and seizure conducted on 20-6-1990 was not proper and that, it was rather planted at the instance of her neighbour by name "Pulickal Varghese", with whom the additional 3rd Respondent/Worker was in inimical terms for nearly 22 years. It is also stated that, the residence of the Worker was left open by her, as it was the usual practice. No proof is there, as to any complaint filed against the said neighbour "Varghese" at any point of time. The case has been sought to be moulded, placing some reliance on Ext. P-8 verdict passed by the Criminal Court, whereby the Worker/accused was acquitted, pointing out that the reasoning given by the Labour Court referring to the volume of evidence let in before the Criminal Court leading to the acquittal, is liable to be held as correct and proper.

7. As noted hereinbefore, there is absolutely no discussion with regard to the evidence let in by the Management to sustain the dismissal. The Labour Court simply made a casual reference that, the circumstances under which M.Ws. 1 and 2, who were the Management witnesses and employees of the Management had let in evidence is conceivable; however forgetting the fact that there was absolutely no case for the Worker as to any instance of hostility, mala fides or victimization on the part of the Management or the Management witnesses, except the inimical terms with her neighbour "Varghese". It appears that, the second Respondent/Labour Court was carried away by the alleged "volume of evidence" stated as let in before the Criminal Court and the quantum of evidence let in before the Labour Court, stated as much less. In other words, the evidence was being considered by its "volume" rather than by evaluating the same as a whole. It is settled law that the evidence is not to be "counted" but to be "weighed", where the Labour Court has gone wrong.

8. Another important aspect to be looked into is that the interference with the quantum of punishment is possible only as provided u/s 11A of the Industrial Disputes Act. The scope of interference has been explained by the Apex Court on many an occasion and it is very much discernible from the decision rendered by a Division Bench of this Court as well, in Cochin Shipyard Ltd. Vs. Industrial Tribunal, . Similarly, mere acquittal in a criminal case cannot constitute the position to hold that, the accused/delinquent is entitled to be absolved from all the charges in a departmental proceedings, as held in Suresh Kumar Vs. Travancore Devaswom Board, . Obviously, Ext. P-8 judgment passed by the concerned criminal court is not an "honourable acquittal" and the Worker/delinquent was acquitted only for the fact that prosecution did not succeed in proving the offence so as to impose the punishment on the accused. By virtue of the settled position of law, the Management is very much at liberty to deal with the misconduct by way of disciplinary proceedings to arrive at the guilt of the delinquent employee independently, where the degree of proof is entirely different, as preponderance of probability is enough and there is no allergy even

to "hear-say" evidence as made clear by the Apex Court in *State of Haryana and Another Vs. Rattan Singh*, and *J.D. Jain Vs. Management of State Bank of India and another*, . This is more so, when the antecedents of the delinquent employee are also permissible to be looked into, while fixing the quantum of punishment. As such, it was not at all correct or proper for the Labour Court to have interfered with the punishment quite mechanically, ordering reinstatement with back wages.

9. With regard to the question of "back wages", it has been made clear by the Apex Court on many an occasion including in the decisions reported in *State of Maharashtra and Others Vs. Reshma Ramesh Meher and Another*, and *Kanpur Electricity Supply Co. Ltd. Vs. Shamim Mirza*, that the payment of back wages is not automatic. It will depend upon the various facts and circumstances, including the availability of any alternate employment for the Worker concerned. As per the decision of the Apex Court reported in *Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar*, , it has been held that the burden is very much upon the employee to prove that she/he was not having any employment and was not having any income in this regard, to sustain payment of back wages or even a portion of the same. Absolutely no evidence was let in from the part of the Union or Worker in this regard and this has not been considered by the Labour Court as well.

10. For the reasons stated hereinbefore, the finding and reasoning given by the Labour Court cannot be sustained in any manner and as such, Ext. P-1 Award is set aside and the matter is remanded to the second Respondent/Labour Court for adjudicating the issue afresh. It is also made clear that, both the sides will be at liberty to adduce further evidence, if any. The second Respondent shall consider and finalize the matter accordingly, as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this judgment. Both the sides shall appear before the second Respondent on 15th October, 2009 so as to enable the second Respondent to fix the next date of posting and to proceed with further steps.

The Writ Petition is allowed to the above extent. No cost.