

(2009) 02 OHC CK 0043
In the Orissa High Court

Mangalam Timber Products Ltd.

APPELLANT

Vs

Sri Sailesh Kumar Gantayat

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 11A

Citation : (2009) 107 CLT 408 : (2009) 121 FLR 1039 : (2009) 4 LLJ 191 :
(2009) 1 OLR 831

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Parija, J.—This Writ Petition by the Petitioner-management is directed against the award dated 23.11.2007 passed by the Labour Court, Jeypore, in I.D. Case No. 6 of 2007, modifying the punishment of dismissal from service, awarded to the workman-Opposite Party and directing his reinstatement.

2. The brief facts of the case is that the Opposite Party-workman while working as a Junior Welder-cum-Fitter was found involved in theft of 10 liters of paint by taking the same out of the factory premises through a truck No. ORK-2199. While the said truck was checked by the security personnel at the factory gate on 27.11.2003, the driver was caught red handed and the involvement of the workman came to light. During investigation, the workman admitted his guilt in writing. As the said act of the workman constituted a major misconduct, as per the Certified Standing Orders of the Petitioner establishment, besides loss of confidence by the management, the workman was issued with a charge sheet. A disciplinary proceeding was drawn up against the workman and reasonable opportunity of hearing was given to the workman during the enquiry. The workman co-operated with the Enquiry Officer and after conclusion of the enquiry, the Enquiry Officer submitted its report, holding the workman guilty of the charges. Since the proved act of misconduct of the workman was grievous in

nature and the management lost confident in the workman, the punishment of dismissal from service was passed.

3. Being aggrieved by the order of dismissal from service, the workman raised an industrial dispute, which was taken up for conciliation and the same having ended in failure, the State Government in the Labour and Employment Department, referred the dispute to the Labour Court, Jeypore, for adjudication. The terms of the reference were as follows:

Whether the action of the management of M/s.Mangalam Timber Products Ltd., in dismissing/terminating the service of Sri Sailesh Kumar Gantayat is legal and/or justified? If not, what relief Sri Gantayat is entitled to?

4. The case of the workman before the Labour Court was that while he was on duty on 27.11.2003, he was called by the Security Officer and asked to sign on a paper in presence of the truck driver and helper, which was subsequently converted to his statement, relating to admission of the commission of theft of two tin containers, each containing 5 liters of paint, from the premises of the Petitioner establishment through a truck, outside the premises. Basing upon the confessional statement the management initiated a proceeding against the workman, resulting in his dismissal from service. The action of the management was stated to be illegal and unjustified and no opportunity of hearing had been given to the workman, before passing the order of dismissal. Accordingly the workman prayed for instatement with full back wages.

5. The management in its written statement pleaded that the workman admitted theft of 10 liters of paint having been committed by him and a proceeding was drawn up, giving sufficient opportunity of hearing to the workman. In the enquiry proceeding, the workman duly participated and in view of his statement in writing admitting his guilt, he did not choose to examine any witness or adduce any evidence. The Enquiry Officer, on consideration of the materials on record, came to hold that the charges against the workman stood established. The management on consideration of the enquiry report and keeping in view the gravity of the offence, awarded the punishment of dismissal from service.

6. The Labour Court, on the basis of the materials on record, came to find that the allegation of theft of 10 liters of paint made against the workman stood substantiated in view of the admission of guilt by the workman as per Exts. 1 and 2. As regard the holding of the enquiry proceeding, the Labour Court on consideration of the records of the enquiry proceeding and the evidence of the parties, came to hold that the enquiry proceeding was held in a fair and proper manner and there was no bias of the Enquiry Officer against the workman, as alleged. Further the Enquiry Officer has complied with the principles of natural justice, in conducting the enquiry, in which the workman duly participated. Accordingly the Labour Court held the enquiry proceeding to be fair and proper.

7. Coming to the punishment of dismissal from service awarded by the management pursuant to the enquiry report, the Labour Court, on the ground

that it has power u/s 11-A of the Industrial Disputes Act (for short "the Act") to modify and/or modulate such punishment, keeping in view the gravity of charges, proceeded to pass the following order:

The Labour Court can modulate the punishment awarded by the management. If the punishment imposed by the management is shockingly disproportionate keeping in view of the particular conducts of the workman and his past record. In the instant case there is no allegation against the workman to have been involved in any type of activities affecting the interest of the establishment. There appears no bad antecedent against the workman. For theft of ten (10) Itrs, of paint, such a harsh punishment like of dismissal is quite unjustified and un-warranted. The workman is of very young age and he can change his behaviour in future who may be an asset to the establishment. In this situation, the award of censure or admonition could have been justified which would be commensurate with the nature of offence committed by him. The punishment awarded by the management for the trifling mistake committed by the workman is strikingly disproportionate which constrained the Court to interfere with the management's decision for modulating the punishment which will meet the interest of justice as well as the interest of workman and also the management for keeping peace and good atmosphere in the establishment and its good productivity. Therefore I feel it justified to revoke the order of dismissal and passed a condign order for mitigating the circumstances to reinstate the workman in the previous post without any back wages with a condition that while in service the workman will not committed any thing like manner which will jeopardized his interest in future.

8. Sri N.K. Mishra, Learned Counsel for the Petitioner-management submits that the Labour Court having found the enquiry to have been conducted in a fair and proper manner, it was not open for it to interfere with the punishment awarded, which is the exclusive domain of the employer. It is the employer who is competent to impose appropriate punishment on its employees, considering the gravity of the charges and also the fact that whether the workman can continue to enjoy the confidence of the management, after such misconduct. It is accordingly submitted that once the misconduct of theft is established in a duly constituted domestic enquiry, the award of punishment by the management, on consideration of the enquiry report and keeping in view the nature and gravity of charges, cannot be interfered with lightly by the Labour Court, in exercise of its power u/s 11-A of the I.D. Act.

9. It is further submitted that as the act of theft constitutes a major misconduct, as per the Certified Standing Orders of the Petitioner establishment and such misconduct having been established in the departmental proceeding, it was not open for the Labour Court to take a lenient view of the matter and modulate and/or modify the order of punishment, contrary to the provisions of the Certified Standing Orders. It is accordingly submitted by the Learned Counsel for the Petitioner that such order of the Labour Court, interfering with the quantum of

punishment, in a case of major misconduct like theft is bound to encourage others and the continuance of the workman in service would be detrimental to the interest of the management.

10. In the case of *Om Kumar v. Union of India* reported in (2001) 2 SCC 386, the Supreme Court observed as under:

But where an administrative action is challenged a "arbitrary" under Article 14 on the basis of *Royappa* (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the *Wednesbury* test. The Courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary, xx xx xx

Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the Court is confined to *Wednesbury* principles as a secondary reviewing authority. The Court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that *Wednesbury* principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment.

11. It is now well settled in law that the High Court/Tribunal while exercising power of judicial review cannot normally substitute its own conclusion on penalty and impose another penalty, except in exceptional and rare cases, where the punishment imposed is shockingly disproportionate or the punishment was in outrageous defiance of logic and shocking to the conscience, it would be appropriate to direct the disciplinary or the Appellate Authority to reconsider the penalty imposed.

12. In the case of *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, , the Supreme Court summed up the position relating to the principles of proportionality in administrative law and came to hold as under:

31. The current position of proportionality in administrative law in England and India can be summarized as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the *Wednesbury* test is to be applied to find out if the decision was

illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bone fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

13. In a subsequent decision of the Supreme Court in the case of V. Ramana Vs. A.P.S.R.T.C. and Others, , the earlier decisions regarding interference of the Court with the administrator's decision was taken into consideration and the Hon"ble Court held as under:

The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

14. In the case of Karnataka SRTC v. B.S. Hullikati reported in (2001) 2 SCC 574, the Supreme Court came to hold as under:

It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either, not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

15. The aforesaid view was reiterated by the Supreme Court in the case of Regional Manager, RSRTC v. Ghanshyam v. Sharma, (2002) 1 LLJ 234 SC , where it was further observed that where the proved acts of misconduct amounts either to a case of dishonesty or of gross negligence and an employee charged of such misconduct ought not to be retained in service.

16. In a subsequent decision of the Apex Court in the case of Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, , the Hon"ble Court again came to hold as under:

xx xx xx It is not only the amount involved but the mental set-up, the type of

duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are in built requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable, xx xx xx.

17. Coming to the question of quantum of punishment, the Supreme Court in the case of Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, , held as under:

Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

18. In the case of Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma, , a 3 Judges Bench of the Supreme Court held that the Tribunals would not sit in appeal over the decision of the employer unless there is a statutory provision in this behalf. Moreover, the Labour Courts must act within the four corners of the statute concerned, in terms of the provisions thereof. When the Labour Court having held that charge No. 4 stood proved, no interference by the Learned single Judge or by the Division Bench was called for. In the instant case, the jurisdiction vested with the Labour Court has been exercised capriciously and arbitrarily in spite of the finding that Charge No. 4, with regard to the pilferage, has been proved beyond any doubt. In our opinion, the conclusion arrived at by the High Court in ordering reinstatement was shockingly disproportionate in the nature of charge No. 4 found proved. When charge No. 4 is proved, which is grave in nature, interference with the punishment of dismissal cannot be justified.

19. In yet another decision in the case of Divisional Controller N.E.K.R.T.C. v. H. Amaresh reported in AIR 2006 SC 3701, the Supreme Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Tribunal and Courts to substitute their subjective opinion in place of the one arrived at by the domestic tribunal.

20. In the present case, as the charge of theft has been found to have been established and the workman has admitted the same, the sympathy and leniency shown by the Labour Court in modifying and modulating the order of punishment is misconceived and misplaced. Moreover as the charge of theft is a serious misconduct, involving the honesty and integrity of the workman concerned, the management is bound to lose the trust and confidence on such workman and any attempt by the Court or the Tribunal to modify and reduce the punishment

awarded may encourage others and prove counter productive and detrimental to the interest of the establishment. Misconduct of the nature of theft as per the Certified Standing Orders of the Petitioner's establishment being a major misconduct, the same has to be viewed seriously and the consequential loss of confidence of the employer is the primary factor to be taken into consideration. When the Labour Court found the charge of theft against the workman well established, which is grave in nature, interference with the punishment of dismissal cannot be justified.

21. In view of the settled position of law relating to the scope of judicial review of the employer's decision with regard to the quantum of punishment, as discussed above, the impugned award cannot be sustained and the same is accordingly quashed. The Writ Petition is accordingly allowed.