

(2012) 03 AHC CK 0039
In the Allahabad High Court
Case No : C.M.W.P. No. 35773 of 1991

Meerut Mandal Vikas Nigam Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7
Constitution of India, 1950 — Article 12, 226
Industrial Disputes Act, 1947 — Section 11A, 25G, 25H

Citation : (2012) 5 AWC 4889 : (2012) 133 FLR 1011

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Rakesh Tiwari and Rajesh Tiwari, for the Appellant; K.P. Agarwal, Suman Sirohi and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—The writ petition is directed against the award dated 19.1.1991 passed in Adjudication Case No. 18/90. The dispute referred for adjudication to the Labour Court whether termination of service of workman Jagmohan Verma, son of Sri Ram Asray Verma on 3.8.1989 is valid or not and if so, what relief he is entitled. The case set up by parties was that workman concerned was transferred from Meerut to Saharanpur on 3.6.1989 but he defied the said order of transfer and did not join at the place of transfer, The employer proceeded with departmental enquiry and passed the order of termination. Industrial disputes was raised which came up for consideration before Labour Court on a reference made by State Government. The Labour Court has recorded finding of fact that charge of disobedience of the order of transfer and dereliction of duty stand proved against workman. It has also recorded finding that in the case in hand there is no requirement for re-enquiry. However, by means of impugned award, having said so, it has interfered only on quantum of punishment by observing that for a mere defiance of transfer order, punishment of termination is excessive and, therefore, has directed for reinstatement of

workman concerned at the place of transfer with all consequential benefits except arrears of salary from the date of termination till the date of award. The period, for which the workman remained out of job, is treated as leave without pay.

2. Learned counsel for the petitioner submitted that once the charge against workman was found proved which shows clear disobedience and dereliction of duty on the part of workman, it was not open to the Labour Court to interfere with the quantum of punishment. It is further submitted that even otherwise if Labour Court was of the view that punishment was excessive yet it has neither given any opportunity either to the employer to impose any other punishment nor itself has imposed any other punishment. Therefore, the impugned order is vitiated in law.

3. In the matter of power of Labour Court for interference in quantum of punishment, Court has repeatedly said that such interference should not be made where serious charge is found proved against the workman. The power of Judicial review in the matter of quantum of punishment with reference to Section 11A of the Act has been considered by the Apex Court in catena of decisions.

4. In U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey, the Apex Court in paras 41, 45 and 46 has said:

41. Order VII, Rule 7 of the CPC confers power upon the court to mould relief in a given situation. The provisions of the CPC are applicable to the proceedings under the Industrial Disputes Act. Section 11A of the Industrial Disputes Act empowers the Labour Court, Tribunal and National Tribunal to give appropriate relief in case of discharge or dismissal of workmen.

45. A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an industrial court shall lose much of its significance.

5. In Jaipur Development Authority Vs. Ram Sahai and Another, , the Court said:

We would, therefore, proceed on the basis that there had been a violation of Sections 25G and 25H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an Award of reinstatement with entire back wages. This Court time and again has held that the jurisdiction u/s 11A must be exercised judiciously. The workman must be employed by a State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. Respondent had not regularly served appellant. The job was not of perennial nature. There was nothing to show that he, when his services were terminated any person who was junior to him in the same category, had been retained. His services were dispensed with as early as in 1987. It would not be proper to direct his reinstatement with back wages. We, therefore, are of the opinion that interest of

Justice would be sub-served if instead and in place of reinstatement of his services, a sum of Rs. 75,000 is awarded to respondent by way of compensation as has been done by this Court in a number of its judgments.

6. It is no doubt true that the principle with respect to imposition of punishment would have to be conceded to the employer and unless it is found by objective consideration that the punishment chosen by the employer is excessive in the sense of reasons other than bona fide or for collateral purpose or extraneous i.e., in the realm of malice in law or arbitrary, in my view. Labour Court shall not interfere with the punishment, if awarded in a bona fide manner.

7. Moreover, in my view, the punishment was not harsh in comparison to the charges levelled against the respondent. The scope of interference in quantum of punishment, when charge of misconduct is proved against an employee, is extremely narrow and restricted. It has repeatedly been held that in judicial review the Court may interfere with the quantum of punishment only when it finds that punishment awarded is shocking to the conscience of the Court. (See : Arundhati Ashok Walavalkar Vs. State of Maharashtra,

8. In State Bank of Mysore and Others etc. Vs. M.C. Krishnappa, the Court followed its earlier decision in The Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabha M. Lad, and said that it is well settled that punishment is primarily a function of the Management and the courts rarely Interfere with the quantum of punishment.

9. In State of Meghalaya and Others Vs. Mecken Singh N. Marak, the Court said that the Court has a limited role to play in the matter of quantum of punishment and unless it is shocking to the conscience, it cannot be subject to judicial review.

10. In Charanjit Lamba Vs. Commanding Officer, Southern Command and Others, it was held that quantum of punishment in disciplinary matters is something that rests primarily with the disciplinary authority. The jurisdiction of a writ court or the Administrative Tribunal for that matter is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith. It further held that the Court would not assume the role of an appellate authority. It would not impose a lesser punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where the punishment is so disproportionate to the gravity of charge that no reasonable person placed in the position of the disciplinary authority could have imposed such a punishment. These very observations have been reiterated in Praveen Bhatia Vs. Union of India (UOI) and Others,

11. The power of Labour Court u/s 11A In the matter of punishment is also not different but is circumscribed with the said observations, as is evident from the Apex Court decision.

12. In U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and

Others, the Court said:

It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour-Court In the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice.

13. Similarly in L.K. Verma Vs. H.M.T. Ltd. and Another, it was observed that:

As regards the quantum of the punishment is concerned suffice it to say that verbal abuse has been held to be sufficient for inflicting a punishment of dismissal. Once the appellant accepted that he had made utterances which admittedly lack civility and he also threatened a superior officer it was for him to show that he later on felt remorse, therefore, and should have tendered an apology.

14. Aforesaid decisions have been followed by Apex Court in Biecco Lawrie Ltd. and Another Vs. State of West Bengal and Another,

15. In the circumstances, I am clearly of the view that the impugned award, in so far it relates to quantum of punishment, is illegal. The charge was serious hence no interference was warranted in quantum of punishment. The impugned award passed by Labour Court, in so far as it has modified the order of punishment against workman is hereby quashed and the order of punishment imposed against respondent No. 3 by the petitioner is upheld.

16. The writ petition is allowed in terms as above. The impugned award is quashed to this extent. No cost.