
(2003) 08 GAU CK 0012

In the Gauhati High Court

Case No : Civil Rule No's. 6669 of 1998, 4083 of 2000 and 4077 of 2002

Mosoraf Ali Laskar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2004) 102 FLR 1098 : (2004) 1 GLR 526

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : N. Dhar, P.B. Majumdar and P. Saikia, for the Appellant; C.G.S.C., for the Respondent

Judgement

Ranjan Gogoi, J.—All the three writ petitions being interconnected, have been taken up together for hearing and are being disposed of by this common judgment and order.

2. I have heard Mr. N. Dhar, learned counsel for the writ petitioner in CR6669/98 and WP(C) 4083/2000 as well as Mrs. M. Hazarika, learned counsel on behalf of the Management Respondents in the aforesaid two cases. She has also been heard in support of the challenge made by the Management in the third case, i.e., WP(C)4077/2002.

3. A brief recital of the facts must be made to indicate how the controversy in the present case has developed. The petitioner workman in CR6669/ 98 was charge-sheeted for remaining absent on as many as 120 days on 59 different occasions during the period 1.1.1996 to 15.12.1996. The charge-sheet in question is dated 6.1.1997. An enquiry was conducted and the petitioner having been found to be guilty of the charges levelled, was imposed with the punishment of reduction in rank, which punishment is the subject matter of challenge in CR 6669/ 98. Another charge-sheet dated 3.2.1998 was issued charging the petitioner workman for being absent from duty for 140 days on 51 different occasions

during the period 1.1.1997 to 13.12.1997 besides continuous absence from 16.12.1997 to 12.1.1998. An enquiry was held in respect of the said charge and the petitioner workman having been found to be guilty in course of the enquiry held, punishment of dismissal from service was imposed. This was done by the order dated 31.3.2000. As an Industrial Dispute involving the petitioner workman was pending before the Industrial Tribunal at Silchar, the Management simultaneously filed an application u/s 33(2)(b) of the Industrial Disputes Act, 1947, before the learned Tribunal for approval of the action taken and by order dated 18.10.2001, the learned Tribunal reused to accord approval and instead directed reinstatement of the workman. Aggrieved, the Management has instituted WP(C 4077/02. It may be noticed at this stage that WP(C) 4083/2000 was filed by the workman against the order imposing the punishment of dismissal from service, which was conveyed to the workman by letter dated 31.3.2000. The challenge made in the WP(C)4083/2000 appears to have become redundant in view of the subsequent facts, i.e., refusal of the Industrial Tribunal to accord approval of the actions taken by the Management, which was impugned in WP(C)4083/2000. In view of the aforesaid subsequent facts, this Court reasonably understands that WP(C)4083/ 2000 need not be answered by this Court.

4. Coming to the facts of the first case, i.e., CR 6669/98, what must be noticed are, the vehement contentions advanced on behalf of the workman petitioner that the Management was in haste to hold an enquiry, inasmuch as, it did not even wait for the workman petitioner to file his written statement in defence. Thereafter, the enquiry officer proceeded in the matter equally hurriedly and purported to record his findings by taking into account some kind of an admission allegedly made by the workman with regard to his unauthorized absence. The absence on the part of the workman-petitioner can hardly be said to be unauthorized, contends the learned counsel for the workman, who in support, has placed before the Court several leave applications filed by the workman. The further contention is that when the leave applications have been submitted, the absence cannot be said to be unauthorized and, therefore, even if the workman had made an admission, the same is of no legal value.

5. Countering the argument advanced on behalf of the petitioner-workman, Mr. M. Hazarika, learned counsel for the Management respondents has pointed out that while the charge against the workman is one relating to absence on 120 days on 56 different occasions, the leave applications submitted are in respect of 5 different periods during which the workman was absent. Two of such applications were on account of sickness whereas in three other applications, the workman had sought leave so as to enable him to perform some urgent business, Mrs. M. Hazarika, learned counsel for the Respondents has also placed before the Court the proceedings of the enquiry particularly the statement of the workman recorded by the Enquiry Officer. Learned counsel has submitted on the basis of the aforesaid record, that there is hardly any ambiguity or doubt with regard to the admission of the workman that he was, in fact, unauthorizedly

absent from duty.

6. I have considered the arguments advanced on behalf of the respective parties in C.R.6669/98. I have also perused the report of the enquiry officer as well as the record of the proceedings including the statement of the workman recorded by the enquiry officer. The materials on record amply demonstrate that while the show cause notice was issued in the month of January 1997, the enquiry commenced in the month of August 1997. The workman did not submit written statement in spite of several requests to the above effect by the Management. As such, the Management decided to proceed with the enquiry in absence of the written statement in defence of the workman. The statements of the workman recorded in course of the proceeding, amply demonstrate that in reply to a specific query made by the enquiry officer, the workman concerned had admitted in unambiguous and clear terms his unauthorized absence from duties. The Management therefore, cannot be faulted for not examining any witness or proceedings in support of the charge levelled. The statement of the delinquent workman acknowledging his unauthorized absence on several occasions being clear and unambiguous, it is the considered view of the Court that the major part of the charge dated 6.1.1997 stood admitted and in that view of the matter, it was open for the Management to impose any such punishment as was commensurate with the offence proved and as provided for by the standing orders in force. Viewed from the aforesaid perspective, the punishment imposed does not appear to be vitiated, which would warrant the interference of the Writ Court. It must be emphasized that the power Article 226 of the Constitution of India to interfere with the punishment imposed after a full fledged enquiry into charges brought are ordinarily examined from the stand point of fairness of procedure, and reasonableness of the findings reached. In the instant case the materials on record do not justify any conclusion that either the findings of the enquiry or the decision of the disciplinary authority needs to be reopened. Civil Rule No. 6669/98, therefore, stands dismissed.

7. Coming to the proceedings of WP(C)4077/2002, what this Court has noticed is that the controversy between the parties lies within a very narrow compass. Mrs. M. Hazarika, learned counsel for the respondents-Management relying on a judgment of the Apex Court in the case of Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, has contended that in a proceeding u/s 33(2) (b) of the Industrial Disputes Act, the power and jurisdiction of the Industrial Tribunal would be essentially confined to an examination of the request of the Management for approval of its action from the following stand point :

"(i) Whether a proper domestic enquiry in accordance with the relevant rules/standing orders and principles of natural justice has been held; (ii) Whether a prima facie case for dismissal based on legal evidence adduced before the domestic Tribunal is made out; (iii) Whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimize the employee regard

being had to be positioned settled by the decision of this Court in *Bengal Bhatdee Coal Co. v. Ram Prabesh Singh*, *Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar*, and *Construction & Engineering Co. Ltd. v. Their Workmen*, *Workmen of Messrs. Firestone Tyre & Rubber Company of India (P) Ltd. v. Management and Eastern Electric & Trading Company v. Baldev Lal* that though generally speaking the award of punishment for misconduct under the standing orders is a matter for the management to decide and the Tribunal is not required to consider the property or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment ; (vi) Whether the employer has paid or offered to pay wages for one month to the employees ; and (v) Whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

8. It is the contention of the learned counsel for the petitioner that the findings recorded by the learned Industrial Tribunal while refusing to accord approval to the dismissal of the workman have been reached without adherence to the law laid down by the Apex Court in the aforesaid judgment. Mrs. M. Hazarika, learned counsel for the Management has taken elaborate pains, by referring to the impugned order of the learned Tribunal, to contend that a mere reading of the said order would disclose that the Tribunal had imported certain requirements, which are beyond the parameters of the law laid down by the Apex Court.

9. Controverting the submissions advanced by Mrs. M. Hazarika, learned counsel for the Management respondents, Mr. N. Dhar, learned counsel for the petitioner workman, has placed reliance on a judgment of the Apex Court in the case of *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others*, in order to emphasize what is the true nature and scope of the jurisdiction of the Tribunal u/s 33(2)(b) of the Industrial Disputes Act. A perusal of the paragraph 14 of the aforesaid judgment, reliance on which has been placed by Mr. N. Dhar, would go to show that the law laid down by the Apex Court in the case of *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.* (supra) is in reiteration of what has been held nearly two decades back in the case of *Lalla Ram* (supra). There has been no fundamental shift in judicial opinion on the scope and ambit of the powers u/s 33(2)(b) of the Act.

10. Mr. N. Dhar, learned counsel for the petitioner workman has also placed reliance on a judgment of the Apex Court, in the case of *National Aluminium Co. Ltd. Vs. Deepak Kumar Panda and Others*, to contend that when leave applications have been submitted, it is the bounden duty of the Management to decide on the entitlement of the workman to leave. Learned counsel has argued that the aforesaid course was not adopted in the present case. Reliance has also been placed on behalf of the workman petitioner on a third judgment of the Apex

Court in the case of Narendra Kumar Chandla Vs. State of Haryana and others, to contend that when the workman applied for lighter duties on account of his ill health, it was the duty and obligation of the Management, having regard to Article 21 of the Constitution to assign to the workman such light duties.

11. The weighty arguments advanced by the learned counsels on behalf of the respective parties have received due consideration of this Court.

A perusal of the findings recorded by the learned Tribunal and the reasons in support of such decision not to accord approval to the dismissal of the workman would go to show that the learned Tribunal took the view that as the workman was ill, he ought to have been assigned lighter duties and further that as the materials on record demonstrated that the workman had filed two leave applications, the Management should have granted leave as may have been admissible to the workman. That apart, the learned Tribunal in the facts of the case, thought it proper to hold that an adverse inference should be drawn on the Management that the punishment imposed was on account of the pendency of CR 6669/98. On the basis of the aforesaid broad findings, the learned Tribunal thought it proper to direct the Management to reinstate the workman with all back wages and to grant him leave for the entire period for which he had remained absent.

12. The scope and ambit of an enquiry u/s 33(2)(b) of the Act is no longer res-integra. The powers of the Industrial Tribunal under the aforesaid provisions of the Act would be severely circumscribed to be exercised within well recognized limits. In the instant case, the materials on record do not disclose that the workman concerned had submitted leave applications for all the 51 different occasions when he was absent for a total of 140 days. It is very much evident from the findings of the Tribunal itself that the workman had submitted two applications one dated 22.1.1997 for the period 18.1.1997 and 19.1.1997 and the other dated 30.1.1998 for the period 23.12.1997 to 11.1.1998. If the workman had submitted only two leave applications covering only different periods during which he was absent, it is not understood as to how the Management could have granted leave to the workman for all the 51 different occasions when he was absent. The contentions advanced on behalf of the petitioner workman that there are more leave applications is really a matter of evidence which ought to have been placed before the learned Tribunal. That apart, the pendency of C.R. 6669/98 filed by the workman challenging the penalty of reduction in rank imposed on him and the inference that the Management had been vindictive against the workman for instituting the aforesaid case on account of which the punishment of dismissal was sought to be imposed, do not logically and reasonably follow each other so as to warrant the finding that the Management had been vindictive against the workman petitioner. Much more evidence on the point would be required to sustain such an inference which is conspicuously lacking in the case. That apart, a perusal of the findings recorded in paragraph 7 of the order dated 18.10.2001 passed by the learned

Tribunal would go to show that the Tribunal had brought into consideration materials which it was not entitled to bring while considering an application u/s 33(2)(b) of the Act. That being so, I am of the view that the matter should be remanded to the Tribunal for a proper disposal in accordance with the law laid down by the Apex Court in the case of Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, The matter shall be disposed of by the learned Tribunal as expeditiously as possible and in any case within a period of 6 months from the date of receipt of this order. As the action of the Management in dismissing the petitioner from service are yet to be approved, the decision of the Management cannot be said to be complete for which reason the" Management will continue to pay the workman his last drawn salary. All the Writ Petitions shall stand answered in terms of the above directions.