
(2011) 09 UK CK 0034

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1093 of 2002, (Old No. 28229 of 1999)

M/s R.B. Narayan Singh Sugar Mills Ltd. Laksar, Distt.
Haridwar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 17B, 6(2A)

Citation : (2012) 132 FLR 646 : (2013) 1 UC 797 : (2012) 1 UC 797

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : R.K. Raizada, for the Appellant; Sudhir Kumar, Brief Holder, Learned Counsel for the State of Uttarakhand respondent Nos. 1 and 2 and Mr. Navneet Kaushik, Advocate, Learned Counsel for the respondent No. 3., for the Respondent

Judgement

Hon'ble B.S. Verma, J.—By means of this writ petition, the petitioner has sought a writ in the nature of certiorari quashing the impugned award dated 26-8-1998, published on 18-3-1999, passed by the Labour Court in Adjudication Case No. 123 of 1997. Briefly stated the facts giving rise to the present writ petition, according to the petitioner, are that the petitioner company- Rai Bahadur Narayan Sugar Mills Limited Laksar is a company incorporated under the Indian Companies Act, 1956 having its registered office and head office at New Delhi. The respondent no. 3 was initially appointed as Cane Weighment clerk for weighing the cane purchased by the mill at the cane purchase centre situated away from the factory. In the course of his employment, the respondent no. 3 caused loss of sugar-cane to the sugar mill. According to the petitioner, the respondent no. 3 was found guilty of causing loss of sugar cane to the factory and he was being awarded minor punishment time and again.

2. It also appears that the respondent no. 3 caused loss of 560 quintals of sugarcane to the factory, therefore, on the basis of complaint against the respondent no. 3, a charge-sheet dated 21-2-1996 was issued to him and a

domestic enquiry was contemplated. After the domestic enquiry, the respondent no. 3 was found guilty of interpolation in the Parchi thereby causing loss of sugar-cane to the sugar mill, therefore, the respondent no. 3 was dismissed from service w.e.f. 15-6-1996.

3. The respondent no. 3 raised an industrial dispute which was registered as C.P. Case No. 118(s)/96. On failure of conciliation proceedings, the dispute was referred to the Labour Court at Dehradun and the dispute was registered as Adjudication Case No. 123 of 1997. On receipt of summons, the parties filed their respective written statement and exchanged rejoinder statements. The learned Labour Court framed following three additional issues in the matter :-

1. Whether the domestic enquiry conducted against the applicant workman was not in accordance with the principles of natural justice?

2. Whether the conclusion of the Enquiry Officer is perverse?.

3. Whether the punishment awarded to the workman is too harsh?

4. After hearing the parties and on perusal of the record, the learned Labour Court decided additional Issue Nos. 1 and 2 in favour of the petitioner, but on Issue No. 3 the learned labour Court came to the conclusion that the punishment is excessive. Ultimately by the impugned award the learned Labour Court has held that the termination of services of the workman-respondent no. 3 by the employer is not legal and proper and instead of the punishment awarded, the labour Court reduced the punishment by withholding two annual increments of pay. The labour Court directed -that the workman be reinstated in service with 50% back-wages.

5. On behalf of the respondent no. 3, counter affidavit has been filed and it has been stated that the respondent no. 3 had been wrongly dismissed from employment.

6. On behalf of the petitioner, rejoinder affidavit has been filed wherein the averments made in the writ petition have been reiterated.

7. I have heard learned counsel for the parties and perused the material placed before this Court.

8. Learned counsel for the petitioner has vehemently submitted that the interference with the punishment by the learned Labour Court was not justified and in support of his argument, reliance has been placed in paragraph no. 8 of the Apex Court verdict in the case of Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma, .

9. I have perused the case law. The Apex Court in that case has relied upon the decision in the case of Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., , wherein in paragraph no. 20 the Apex Court has held thus :-

20. It is no doubt true that after introduction of Section 11A in the Industrial

Disputes Act, certain amount of discretion is vested with the Labour Court/ Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised u/s 11A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment.

10. Learned counsel for the petitioner further contended that the discretion, which can be exercised u/s 11A of the Central Industrial Disputes Act, 1947 is available u/s 6(2-A) of the U.P. Industrial Disputes Act, which is para-materia to Section 11A of the Industrial Disputes Act 1947.

11. Learned counsel for the petitioner has further submitted that the workman ought not to have been awarded the back wages for the period when the workman had not worked as a consequential benefit arising from imposition of a lesser punishment. In support of his argument, learned counsel for the petitioner has placed reliance in paragraph no. 19 of the Apex Court verdict in the case of J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, , wherein the Apex Court has inter alia observed as under:-

What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/ retirement benefits, and not for other benefits like increments, promotions, etc.

12. In that case, the Apex Court in paragraph no. 21 has held as under:-

21. In this case, the Labour Court found that a charge against the employee in respect of a serious misconduct was proved. It, however, felt that the punishment of dismissal was not warranted and therefore, imposed a lesser punishment of withholding the two annual increments. In such circumstances,

award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all.

13. In the case at hand, the learned Labour Court, while deciding additional Issue Nos. 1 and 2 has categorically held that the domestic enquiry held against the workman was in accordance with the principles of natural justice and that the finding of the Enquiry Officer is not perverse. The learned Labour Court has only reduced the quantum of punishment by the impugned award.

14. In my considered view, the ratio of the case-law of J.K. Synthetics Ltd. (supra) is fully applicable to the facts of the case at hand, therefore, so far as the grant of 50% back wages under the impugned award is concerned, the finding of the learned Labour Court is not sustainable in the eye of law. The workman-respondent no. 3 is not entitled to award of 50% back wages.

15. This Court by interim order dated 15-7-1999 while staying the execution of the impugned award, directed the petitioner to compliance with the provisions of Section 17B of the Industrial Disputes Act. The learned counsel for the respondent no. 3-workman has also informed the Court that the respondent no. 3 had already attained the age of superannuation and has retired from service at the age of 60 years. The learned Labour Court has given reasons in the impugned award to reduce the punishment holding that the punishment of dismissal was excessive.

16. Considering this fact that since the respondent no. 3 had already completed 60 years" age and as the petitioner had already complied with the provisions of Section 17B of the said Act, therefore, in the facts and circumstances of the case following the ratio of the Apex Court verdict in the case of J.K. Synthetics Ltd. Vs. K.P. Agrawal and another (supra), it would be proper to direct the petitioner to pay the wages to the respondent no. 3-workman only from the date of publication of the impugned award upto the date of superannuation of the respondent no. 3 at the age of 60 years and the amount paid to the respondent no. 3 under the provisions of Section 17B of the said Act shall also be deducted therefrom.

17. For the reasons and discussion above, the writ petition is partly allowed. The impugned award is liable to be modified to the above extent. The writ petition is partly allowed. Costs easy. The finding of the learned Labour Court granting 50% back wages from the date of termination to the date of publication of award is set aside. The respondent no. 3 shall be entitled to get wages from the date of publication of the impugned award till the date of his superannuation at the age of 60 years and the amount paid to him u/s 17B of the Industrial Disputes Act shall be deducted from his wages.