

(1998) 06 KAR CK 0037

In the Karnataka High Court

Case No : Writ Appeal No's. 1462, 1463, 1517 and 7668 of 1996

N. Puttaswamy and Another

APPELLANT

Vs

Hindustan Machine Tools Limited, Watch Factory, Bangalore
and Another

RESPONDENT

Date of Decision : 24-06-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 11 A

Citation : (1998) 80 FLR 923 : (1998) ILR (Kar) 3253 : (1998) 6 KarLJ 1 :
(1999) 2 LLJ 431

Hon'ble Judges : R.P. Sethi, C.J;K.R. Prasad Rao, J

Bench : Division Bench

Advocate : Sri M.C. Narasimhan and Sri K. Subba Rao, for the Appellant; Sri K. Kasturi, for the Respondent

Judgement

1. The appellants, while in employment of the respondent-Company, were charge-sheeted for committing theft and passing of watch parts in order to make wrongful gains. On the basis of the enquiry, the appellants were dismissed from service. Aggrieved by the orders of their dismissal, the appellants filed writ petitions in this Court alleging therein that they were not afforded a fair opportunity of defending themselves and that the admissions made by them while in police custody were wrongly made the basis to hold them guilty. It was further contended that on account of the pendency of criminal cases, they were handicapped in putting their defence effectively before the Inquiry Officer. The learned Single Judge vide the orders impugned in these appeals, came to the conclusion that the Inquiry Officer had not sifted the evidence properly to ascertain the liability in the context of the charge framed against the appellants. The veracity of their evidence was also held to be not properly considered. The Disciplinary Authority was stated to have been carried away by the findings of the Inquiry Officer without adverting to the question as to how it had arrived to those findings. The alleged confessional statements were held to have been wrongly relied upon by the Inquiry Officer, the Disciplinary Authority and the

Appellate Authority. The learned Single Judge concluded--"Justice has not been meted out to the delinquents at the appropriate stage when it should have been extended. It is like from Caesar to Caesar". After holding that the punishment imposed upon the appellants on the basis of the enquiry was not justified, the learned Single Judge held that:

"13. The consequential fall out of the above finding would be to set aside the order of dismissal and direct the reconsideration of the matter afresh. But, it may not take us anywhere as the management has in clear terms expressed that they have lost confidence in these employees. Whatever explanation be offered explaining the statement made by the employees which was relied on by the management, one cannot find fault with the management if they believed that it contained some shreds of truth. It may be hence that they stated that they have lost confidence in these employees. In view of all these that has transpired it can hardly stated that the management is not justified in stating so as well. If so, even if the matter is remitted back for fresh disposal the employees may not earn an order of reinstatement. This Court cannot order reinstatement of the employees even if the order of dismissal is totally illegal. In such circumstances no purpose will be served by directing a fresh disposal of the appeal. It will be a mere prolongation of agony. It will benefit none. Perhaps this may be a case where proper relief would be award of monetary compensation.

14. As noted earlier the dismissal order has been passed by the authorities without applying their mind and without considering the case of the petitioners as required by law. Hence they can claim to have been relegated to the status as if their contract of employment still subsists and initiate fresh proceedings for consequential monetary relief. As this Court is not directing a fresh consideration of the case of the employees by the employer the employees cannot be conferred with such a right. Hence ends of justice will be met if in lieu of the said relief the delinquents are awarded compensation. The petitioners will hence be awarded compensation in lieu of their claim for reinstatement and consequential relief, a sum reckoned at the rate of one month's salary for every completed year of service, the rate of salary being the last drawn salary. The petitioners will be entitled to claim the same till the date of the above judgment. Whatever amount that is paid to the workers in the course of this proceeding will be set off from the amount due as quantified above and the balance amount alone will be paid to them. They will also be entitled to claim whatever statutory contribution they might have made while in service and which is lying to their credit. The petitioners are not entitled to claim any interest. The writ petitions are disposed off as above..."

2. Not satisfied with the order of the learned Single Judge, the appellants-workmen have filed these appeals submitting therein that the learned Single Judge had erred in not directing reinstatement and backwages to the appellants after he had concluded that justice had not been meted out to them. It is further contended that the learned Single Judge was not justified in holding that as the

management had lost confidence, the appellants were entitled to only the payment of amount in terms of the order passed by him.

3. In Writ Appeal No. 7668 of 1996, the appellant therein has urged that the learned Single Judge was not justified in disposing of the writ petition on the basis of the orders passed in W.P. No. 16942 of 1988 and other connected cases, admittedly, filed by the workmen who were similarly situated. It is contended that as the appellant had been acquitted of the criminal charge, he should have been reinstated with all consequential benefits including grant of backwages. The appellant in the said case has enumerated various circumstances in para 10 of the appeal memo to show that the principles of natural justice had been violated during the enquiry held against him. The findings of the enquiry held against him is termed to be perverse which could not be made a basis for any disciplinary action. The appellant has referred to various statements recorded during the enquiry to impress that the findings returned against him were unjustified and no useful purpose will be served in remanding the case for fresh enquiry. It is prayed that this Court may appreciate the evidence itself and pass appropriate orders regarding the reinstatement of the appellant.

4. The admitted or almost proved facts of the case are that the appellants were charge-sheeted, as noted earlier, in the year 1987. The allegations pertain to the theft of the property of the respondent-company. In the enquiry held, the appellants were found to be guilty of the charges framed against them. The conduct of the enquiry is held to be illegal for the reasons already noted. The reasons for setting aside the enquiry justified a remand of the case for fresh enquiry. About 10 years period had elapsed between the framing of the charges against the appellants and the order of the learned Single Judge. It is not disputed that despite holding the order of discharge or dismissal as unjustified, the Labour Court or the Tribunal has the power and jurisdiction to appropriately mould the relief including the grant of compensation in lieu of reinstatement if the circumstances of the case justified such compensation. The Tribunal or the Court under the Industrial Disputes Act should normally grant the relief to compensate the workman for the damages he has suffered for the loss of his employment and legitimate expectation for the future in that employment. Such compensatory relief could be reinstatement with or without backwages or compensation in lieu of the reinstatement. Punitive considerations should not weigh with the Court in assessing or deciding the mode and method of compensating the workman. Considerations such as the nature of the employer's business and his capacity to pay, the employee's age, the nature of his employment, length of his service, seniority, present salary, future prospects, opportunities for obtaining similar alternative employment, are required to be kept in mind while granting the relief. While awarding compensation, the amount should not mechanically be calculated.

5. While dealing with the scope of Section 11A of the Industrial Disputes Act and the powers of the Court regarding directing reinstatement, in case of proved

misconduct, the Supreme Court in *Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another*, referred to various Judgments and held:

"18. Ever since the decision of the Federal Court in AIR 1949 111 (Federal Court), the settled position in law is that the industrial tribunal has the jurisdiction to direct reinstatement in appropriate cases. In a case of wrongful dismissal the normal rule adopted in industrial adjudication is to order reinstatement. There are, however, exceptions to this rule and even when it is found that the dismissal was wrongful the workman has been denied reinstatement for the reason that it would not be expedient to direct reinstatement.

19. In *The Punjab National Bank Ltd. Vs. Its Workmen*, this Court has approved the following observations of the Full Bench of the Labour Appellate Tribunal in *Buckingham and Carnatic Mills Limited, v Their Workmen*:

"But in so ordering the Tribunal is expected to be inspired by a sense of fair play towards the employee on the one hand and considerations of discipline in the concern on the other. The past record of the employee, the nature of his alleged present lapse and the ground on which the order of the management is set aside are also relevant factors for consideration".

20. In that case this Court has laid down (at page 173 of AIR):

"It is obvious that no hard and fast rule can be laid down in dealing with this problem. Each case must be considered on its own merits, and, in reaching final decision, an attempt must be made to reconcile the conflicting claims made by the employee and the employer. The employee is entitled to security of service and should be protected against wrongful dismissals, and so the normal rule would be reinstatement in such cases. Nevertheless in unusual or exceptional cases the Tribunal may have to consider whether, in the interest of the industry itself, it would be desirable or expedient not to direct reinstatement. As in many other matters arising before the Industrial Courts for their decision, this question also has to be decided after balancing the relevant factors and without adopting any legalistic or doctrinaire approach".

21. Reinstatement has not been considered as either desirable or expedient in certain cases where there had been strained relations between the employer and the employee, when the post held by the aggrieved employee had been one of trust and confidence, or when, though dismissal or discharge was unsustainable owing to some infirmity in the impugned order, the employee was found to have been guilty of an activity subversive or prejudicial to the interests of the industry -- *Hindustan Steel Limited v A.K. Roy*. In cases where it is felt that it will not be desirable or expedient to direct reinstatement the workman is compensated monetarily by awarding compensation in lieu of reinstatement for loss of future employment".

6. We are satisfied that keeping in view the facts and circumstances of the case

and the tests regarding reinstatement, as noticed herein above, the learned Single Judge was justified not to reinstate the appellants and instead award them compensation in lieu thereof. The employers were satisfied with the order of the learned Single Judge as is evident from the fact that they did not choose to file any appeal. Despite vehement arguments of the learned Counsel for the appellants, we have not been persuaded to take a different view by directing reinstatement of the appellants. The learned Counsel for the appellants have alternatively submitted that the compensation awarded was totally inadequate and insufficient. Relying upon the tests noticed hereinabove, it has been urged on behalf of the appellants that the learned Single Judge was not justified in directing payment of the sum reckoned at the rate of one month salary for every completed year of service, the rate of salary being the last drawn salary.

7. During the course of the arguments, we had suggested to the respondent-employer to pay the compensation by reckoning the same at the rate of one month's salary for every completed year of service at the rate of current salary. Our suggestion was not accepted on the ground that the financial constraints of the employer did not permit them to grant the aforesaid relief. According to the calculations made by the respondents, the appellants -- N. Puttaswamy (in W.A. No. 1462 of 1996) would be entitled to a sum of Rs. 1,05,992/- in terms of the order of the learned Single Judge and a sum of Rs. 2,79,104/- as per our observations; M. Venkatesh (in W.A. No. 1463 of 1996) would be entitled to a sum of Rs. 56,892/- in terms of the order of the learned Single Judge, which if calculated according to our suggestion would be Rs. 1,66,320/-; J. Samuel (in W.A. No. 1517 of 1996) would be entitled to payment of a sum of Rs. 88,792/- in terms of the order of the learned Single Judge, whereas he would be entitled to a sum of Rs. 2,47,360/- in terms of the suggestion made by us; and a sum of Rs. 63,264/- is payable to P.V. Venkateshan (in W.A. No. 7668 of 1996) in terms of the order of the learned Single Judge, and a sum of Rs. 2,08,350/- would be payable as per our suggestion. The respondent-employer have also shown us the status report of unpaid statutory dues and employee recoveries/contributions.

8. We agree with the learned Counsel for the appellants that the amount of compensation awarded by the learned Single Judge was highly inadequate and virtually not compensatory. We also feel that as per our suggestion, the employer may not be unnecessarily financially burdened. Keeping in view the various circumstances of the case and with the object of putting an end to the litigation we have decided to quantify the amount of compensation to be paid to each of the appellants. We propose to modify the order of the learned Single Judge to that extent.

9. Under the circumstances, the appeals are disposed of by modifying the order of the learned Single Judge that instead of the compensation awarded by him, the appellants -- N. Puttaswamy (in W.A. No. 1462 of 1996) would be entitled to payment of Rs. 2,00,000/-; M. Venkatesh (in W.A. No. 1463 of 1996) to an amount of Rs. 1,20,000/-; J. Samuel (in W.A. No. 1517 of 1996) would be

entitled to payment of Rs. 1,75,000/-and P. V. Venkateshan (in W.A. No. 7668 of 1996) to a sum of Rs. 1,50,000/-, as compensation in lieu of their reinstatement. The aforesaid amount is directed to be paid to the appellants within a period of two months from the date of this judgment, failing which the appellants are held entitled to the payment of the aforesaid amount along with interest at the rate of 12% per annum calculated from the date of this judgment. In the peculiar circumstances of these cases, parties are left to bear their own costs.