

(2008) 11 MAD CK 0177

In the Madras High Court

Case No : Writ Appeal No's. 2844 and 2845 of 2001

P. Jayaraman

APPELLANT

Vs

Bharat Heavy Electricals Ltd.

RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Constitution of India, 1950 — Article 142, 226
Industrial Disputes Act, 1947 — Section 11A, 2(A)

Citation : (2009) 2 MLJ 218

Hon'ble Judges : V. Dhanapalan, J; S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : No appearance, for the Appellant; B.T. Seshadri, for R.1, for the Respondent

Judgement

V. Dhanapalan, J.—The appellant-workman in both the Writ Appeals challenges the common order dated 11.1.2001, passed by the Writ Court in W.P. Nos: 239 and 1604 of 1995 whereby the learned Single Judge set aside the Award of the Labour Court which directed reinstatement of the appellant without backwages, but with continuity of service, excluding the period of absence which were to be treated as Earned Leave and to be adjusted in future.

2. The brief facts of the case, in a nutshell, for consideration of these appeals, are as follows:

(i) The appellant-workman was appointed as a Fitter Grade-IV on 4.9.1981. From the year 1983 onwards, he was not regular in his attendance and therefore, he was warned twice on 15.2.1985 and 14.3.1985. On 24.10.1985, a memo was issued for his unauthorised absenteeism. On 14.11.1985, the appellant was chargesheeted for unauthorised absenteeism and subsequently he was severely warned. On 10.3.1986, he was again chargesheeted for his irregular attendance. A departmental enquiry was conducted and the enquiry officer found the appellant guilty of the charges viz., unauthorised absence. The Disciplinary Authority imposed the penalty of reduction of pay of the appellant to the

minimum of the scale with effect from 25.6.1986 for a period of two years with cumulative effect. For the subsequent unauthorised absence, the appellant was once again chargesheeted on 1.9.1986. He was found guilty and this time he had been punished with reduction to the next lower grade i.e., from Artisan Gr.IV to Semiskilled worker, with effect from 25.8.1987 for a period of two years.

(ii) Further, on and from 4.7.1987 the appellant was irregular in attending the Company and a charge memo was issued on 10.9.1987. Another departmental enquiry was conducted, where the appellant explained to the charges made against him. The enquiry officer found the appellant guilty of the charges framed and the Disciplinary Authority after going through the past records of the appellant and findings of the enquiry officer, passed the order of removal of the appellant from service of the Company with effect from 1.12.1987.

(iii) After removal from service, the appellant approached this Court by way of filing Writ Petition No: 48679 of 1990 and this Court dismissed the said Writ Petition by giving liberty to the petitioner to raise an Industrial Dispute under the Industrial Disputes Act, 1947 in accordance with law. Since the conciliation proceedings did not fructify, the Assistant Commissioner of Labour, Trichirappalli sent a failure report to the Government and the appellant thereafter raised the Industrial Dispute in I.D. No. 244 of 1992 on the file of the Labour Court, Trichirappalli, u/s 2(A) of the Industrial Disputes Act. The Presiding Officer of the Labour Court, Trichirappalli, passed an Award on 10.5.1994 holding that the punishment of removal from service imposed on the appellant is excessive and modified the punishment by reinstating him without backwages, but with continuity of service, excluding the period of absence, which can be treated as Earned Leave and that may be adjusted in future.

(iv) Challenging the Award passed by the Labour Court, Trichirappalli, the first respondent, Bharat Heavy Electrical Ltd., Trichirappalli preferred the Writ Petition No: 239 of 1995 for quashing of the Award, while the appellant-workman preferred W.P. No: 1604 of 1995, insofar as the rejection of his claim for backwages. Learned Single Judge of the Writ Court by a common Order dated 11.1.2001, allowed the Writ Petition No: 239 of 1995 filed by the first respondent, BHEL, Trichirappalli, setting aside the Award of the Labour Court, Trichirappalli, and consequently, dismissed the Writ Petition No. 1604 of 1995 filed by the appellant-workman claiming backwages. Aggrieved of the same, the appellant-workman has preferred these two Writ Appeals.

3. When the matter was taken up for hearing on 31.10.2008 and 3.11.2008, there was no representation on behalf of the appellant-workman and therefore, we have perused the material papers and heard the learned Counsel appearing for the first respondent, BHEL.

4. There is no dispute as to the disciplinary proceedings initiated against the appellant and the punishments imposed on him. A perusal of Exhibits M.1 to M.16 produced on the side of the first respondent-BHEL would show that the

appellant has been pleading mercy throughout for his unauthorised absence. The Labour Court considering the fact that the appellant's services from 1981 to 1985 had been proved to be very satisfactory and except the unauthorised absence, the appellant having not been found inefficient in his work or agitating against the Management, and taking into consideration of the evidence on the leave particulars observed that if the Management is kind enough to reinstate the appellant without backwages, the same will in no way affect the financial capacity of the Management, ordered for reinstatement of the appellant without backwages with continuity of service.

5. Before the Learned Judge of the Writ Court, the first respondent-BHEL, assailed the Award of the Labour Court, Trichirappalli on the ground that the exercise of discretion made by the Labour Court in invoking Section 11-A of the Industrial Disputes Act is totally erroneous and is not sustainable in law, particularly, when all the charges have been established by the Management. On behalf of the appellant-workman, sympathy was pleaded. Learned Judge of the Writ Court taking a view that chronic unauthorised absence should be viewed seriously as the same would undermine the discipline of an establishment, and having regard to the bad track record of service of the appellant, displaying that he had no intention of correcting himself from reporting for duty regularly in spite of several warnings and minor punishments imposed upon him, came to the conclusion that there is no scope for confirming the Award of the Labour Court in directing reinstatement with continuity of service.

6. Learned Counsel for the first respondent-BHEL relied on the judgement of the Supreme Court in Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and Anr. reported in (2006) 13 SCC 619, and sought to contend that the Labour Courts should not tend to degenerate into misplaced sympathy, generosity and private benevolence. In the said Judgement, their Lordships have held thus:

10. ...The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.

7. Learned Counsel for the first respondent-BHEL also pressed into service the judgement of the Apex Court in LIC of India v. R. Dhandapani reported in (2006) 13 SCC 613, for the legal position that when there is no indication or reason to justify or modify the punishment imposed, the Award of the Labour Court is wholly misplaced. Their Lordships of the Apex Court in that context held as follows:

10. The High Court found that the industrial Tribunal had not indicated any reason to justify variations of the penalty imposed. Though learned Counsel for the respondent tried to justify the award of the Tribunal and submitted that the Tribunal and the Learned Single Judge have considered the case in its proper perspective, we do not find any substance in the plea. Industrial Tribunals and Labour Courts are not forums whose task is to dole out private benevolence to workmen found by the Labour Court/Tribunal to be guilty of misconduct. The Tribunal and the High Court, in this case, have found a pattern of defiance and proved misconduct on not one but on several occasions. The compassion which was shown by the Tribunal and unfortunately endorsed by the learned Single Judge was fully misplaced.

11. In the aforesaid background the Division Bench of the High Court was wholly unjustified in giving directions contained in Para 20 of its order, having set aside the award of the Tribunal as affirmed by the learned Single Judge.

8. Further reliance was placed in *Maruti Udyog Ltd. v. Ram Lal* reported in (2005) 9 SCC 638, wherein it was observed:

44. While construing a statute, 'sympathy' has no role to play. This Court cannot interpret the provisions of the said Act ignoring the binding decisions of the Constitution Bench of this Court only by way of sympathy to the workmen concerned.

45. In *A. Umarani Vs. Registrar, Cooperative Societies and Others*, this Court rejected a similar contention upon noticing the following judgments:

68. In a case of this nature this Court should not even exercise its jurisdiction under Article 142 of the Constitution of India on misplaced sympathy.

69. In *Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others*,) it is stated:

36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation where to the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.

37. As early as in 1911, *Farewell, L.J. in Latham v. Richard Johnson & Nephew Ltd.* (1911) All ER Rep. 117 observed:

We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will-o'-the-wisp to take as a guide in the search for legal principles.

9. Learned Counsel for the first respondent also relied on the judgment in *Seema Ghosh v. Tata Iron & Steel Co.* reported in (2006) 7 SCC 772, to contend that under Article 226 of the Constitution, the learned Single Judge is right and within his jurisdiction in reassessing and revaluing the weight of the evidence in the

case recorded by the Labour Court. In the said decision, the Apex Court observed:

The findings of the Labour Court were against the facts and it passed the award in favour of the workman on totally misplaced sympathy. Both the Single Judge and the Division Bench were right and within their jurisdiction in reassessing and revaluing the weight of the evidence in the case recorded by the Labour Court by which the High Court came to the conclusion that the workman was not entitled to any relief. When the judgement of the Labour Court is perverse and against the facts and records, the High Court is entitled to exercise its jurisdiction under Article 226 and to interfere with the perverse finding and set aside the same.

10. The powers of the Labour Court u/s 11-A of the Industrial Disputes Act, 1947, is to give appropriate relief in case of discharge or dismissal of workmen. u/s 11-A of the Act, where an Industrial Dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, in the course of the adjudication proceedings, if the Labour Court is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. The only proviso attached to Section 11-A of the Act is that the Labour Court shall rely on the materials on record and shall not take any fresh evidence in relation to the matter.

11. In the instant case, the Labour Court exercised its power as provided u/s 11-A of the Act, taking into consideration of the materials on record and also based on the evidence adduced before it and passed the award holding that the workman is entitled to be reinstated into service without backwages, but with continuity of service. Though the Labour Court noticed certain discrepancies with regard to the unauthorised absence of the appellant-workman, the said misconduct has been looked into considering his meritorious service between 1981 and 1985 and having been awarded certificates for his efficiency in the work and the contribution made by him to the Management, and there being no unauthorised absence between 1981 and 1985, the reason for the unauthorised absence, the conduct of the workman and for the other reasons recorded by it, the Labour Court took the lenient view of reinstatement of service without backwages. We are of the considered view that such factors which weighed with the Labour Court to arrive at the conclusion cannot be taken in any manner on any mistaken or misplaced sympathy. A reading of the award of the Labour Court only establishes that based on the material evidence, which forms part of the record, and there being no dispute over the conduct of the workman during the relevant period of absence, it has arrived at the conclusion. Hence the decisions in (2006) 13 SCC 613 and (2005) 9 SCC 638, relied on by the learned Counsel for the first respondent are not applicable to the facts of the present case. Therefore, we are of the considered view that there is no scope for interference

with the Award of the Labour Court and the conclusion arrived at by the Labour Court is in no way contrary to the provisions contemplated u/s 11-A of the Industrial Disputes Act.

12. Reference was made in this regard to the rulings of the Supreme Court in Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and Anr., and Maruti Udyog Ltd. v. Ram Lal referred to earlier, and an argument was advanced by the learned Counsel for the first respondent that the Labour Court having given findings in the matter of unauthorised absence, cannot pass an award on a mistaken and misplaced compassion. On a due consideration to the decisions of the Supreme Court it is seen that Their Lordships have observed that the reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence and it is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. While taking note of these propositions, in the present case, it could be seen that the Labour Court has exercised its jurisdiction and powers u/s 11-A of the Act taking into account the material evidence available on record and therefore it cannot be termed that it is only on mistaken sympathy or misplaced sympathy the conclusion has been arrived at by the Labour Court and therefore the same is perverse. In our opinion, the conclusion arrived by the Labour Court is in accordance with the provisions u/s 11-A of the Act and while awarding the punishment, the Labour Court has properly exercised its jurisdiction taking into consideration the material evidence and in fact a logical conclusion has been arrived at.

13. Learned Counsel for the first respondent invited our attention to Clause 60 of the Standing Orders, which deals with acts and omissions constituting misconduct. Sub Clause (5) of Clause 60 of the Standing Orders terms "habitual late attendance and wilful or habitual absence from duty without leave or without sufficient cause" as one of the misconduct.

14. It is evident from the records that the appellant-workman has applied for leave from 5.8.1986 to 13.10.1986 with Medical Certificate. It is also the case of the appellant that he did not return to duty from 2.8.1986 to 1.9.1986 due to ulcer problem. The Management has also accepted that the appellant was taking treatment even from 19.8.1986 onwards as per the advice of the Chief Medical Officer. Before the enquiry officer, the appellant produced his O.P.Book and his medical certificate and gave the explanation that he was physically and mentally not well and that was the reason why he could not attend during the relevant period of leave. The appellant also assured before the enquiry officer that he would get his family shifted to the nearby place and he would take proper treatment for his health. It is also to be taken note of that for the charge sheet dated 10.9.1987, the appellant appeared before the enquiry officer on 17.10.1987 and narrated the reasons for his unauthorised absence from 4.7.1987 and expressed his unwillingness to perform his work in the Tool

Engineering Department and requested for his transfer to any other Unit and assured the Enquiry Officer that in that case, he would be regular in attending the work. However, on 19.10.1987, when he had gone to the work spot, he was prevented from doing any work and the Senior Manager Mr. Karuppusamy, who had grudge against him, according to the appellant, had instructed him to meet the enquiry officer and the Chief Medical Officer. But both of them told him that they had nothing to do anything in the matter. Once again he met the Senior Manager to assign him work, but such a request was refused. Thereafter the appellant had contacted three Chargemen and requested them to give him employment at least on the basis of mercy. He had also sent several representations, but they were not considered favourably. Ultimately, the charges were held to be proved and the appellant was removed from service with effect from 1.12.1987. It is also to be noted that the appellant was already punished by imposing stoppage of increment for two years with cumulative effect on 25.8.1986 and once again charge sheeted on 1.9.1986 and after a departmental enquiry, his rank was reduced from Artisan Grade IV to Semiskilled worker with effect from 25.8.1987 for a period of two years.

15. The Labour Court while considering the "habitual absence" of the appellant "without leave or without sufficient cause", which constitutes a misconduct as provided under Clause 60(5) of the Standing Orders, has rightly took into the consideration all the above said aspects and finding that except the relevant period of unauthorised absence of the appellant, the appellant is neither inefficient in his work nor agitating against the Management, and the appellant has been feeling repentant for his activities, took a lenient view and ordered reinstatement, but refused to grant backwages. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when the same is unauthorised. But, there cannot be any sweeping generalisation. At the same time, some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings. In the case on hand, the Labour Court while exercising its jurisdiction u/s 11-A of the Act, has rightly taken into consideration all the material evidence, including the explanations/reasons submitted by the appellant for his unauthorised absence and arrived at the proper conclusion. In our view, the findings of the Labour Court appears to be fair and reasonable, there is no legal infirmity and therefore the award of the Labour Court does not call for any interference.

16. For the reasons stated above, we hold that the jurisdiction of the Labour Court in no way infringes the proposition of law laid down by the Supreme Court in the decisions cited supra. However, the said fair conclusion of the Labour Court has not been properly looked into by the learned Single Judge, while exercising jurisdiction under Article 226 of the Constitution. The Labour Court is vested with the powers under the provisions of Section 11-A of the Act and it has acted in accordance with such powers conferred on it. Based on the material evidence and the evidence adduced, the Labour Court has passed the Award whereas, the

learned Single Judge, while exercising the powers under Article 226 of the Writ jurisdiction, while looking into the finding as well as the conclusion of the Labour Court and the quantum of punishment arrived at by it, has to see that whether there is any infringement of the law or any perversity in the findings of the Labour Court. Instead, the learned Single Judge has interfered with the award of the Labour Court in respect of punishment imposed by it and the interference of the learned Single Judge is not at all warranted in the facts and circumstances of the case. Accordingly, we hold that the findings rendered by the Labour Court is in accordance with the power conferred upon it u/s 11-A of the Act and on the contrary the reasoning of the learned Single Judge for setting aside the Award of the Labour Court is not in conformity with the legal propositions. Therefore, that the Common Order passed by the learned Single Judge suffers with legal infirmity and the same is set aside.

17. As regards the claim for backwages, it is to be seen that the Labour Court has consciously exercised its jurisdiction in denying the backwages in its entirety. The manner in which back wages are viewed has undergone a significant change in the last two decades. They are no longer considered to be an automatic or natural consequence of reinstatement. As laid down by the Hon'ble Supreme Court in J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, , in cases of "misconduct reinstatement" backwages do not follow as a natural or necessary consequence of such reinstatement. Even if the courts finds it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially, which depends upon the facts and circumstances of each case. In the case on hand, this aspect has been taken into consideration by the Labour Court which correctly denied the back wages taking into consideration the material evidence available on the leave particulars.

18. The legal analogy in the matter of considering consequential benefit of continuity of service, the settled proposition is that whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances of the case to decide whether the continuity of service or the consequential benefits should be directed. As laid down by the Apex Court in the decision cited above, in the case of "misconduct reinstatement", which is distinguishable from illegal termination, wherein backwages and continuity of service automatically follow, neither continuity in service nor consequential benefits follow as a natural or necessary consequence of such reinstatement . Therefore, following the dictum of the Supreme Court, we make it clear that the continuity of service ordered herein should only be for the purposes of pensionary/retirement benefits.

19. In the result, W.A. No: 2845 of 2001 is allowed holding that the appellant-workman is entitled for reinstatement without backwages, but with continuity of service. Consequently, W.A. No: 2844 of 2001 challenging the rejection of backwages is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.