
(2011) 04 AHC CK 0069

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24 of 2005

Parshu Ram Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Industrial Disputes Act, 1947 — Section 11, 11A

Citation : (2011) 8 ADJ 265 : (2011) 5 AWC 5286 : (2011) 130 FLR 858 :
(2012) LLR 116 : (2011) 3 UPLBEC 2167

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon''ble Sudhir Agarwal, J.—This writ petition is directed against the award dated 23.12.2003 (Annexure 18 to the writ petition) of Industrial Tribunal (I) U.P., Allahabad in Adjudication Case No. 133 of 1991 answering the reference made for adjudication by notification dated 22.8.1991 as to whether termination of the Petitioner workman was valid while three others have been granted relief. The Tribunal has held that the Petitioner - Parsuram Pandey and one Ram Karan were rightly dismissed from service. They were charged of abusing and assaulting a senior official of the company namely, Sri S.C. Ghakhar in an incident occurred on 22.6.1987. It has also been held that situation in company was such which did not justify holding of any inquiry against the Petitioner workman. The factum that some incident of maar-pit actually took place on the said date was admitted, the Tribunal has found that Petitioner was guilty and rightly dismissed from service.

2. Miss Bushra Maryam, learned Counsel appearing for the Petitioner contended that no inquiry has been held. It cannot be said that charges levelled against Petitioner are proved and hence, dismissal of Petitioner workman is wholly illegal. He has also contended that there is no evidence to show that Petitioner has

actually assaulted and abused any one. On the contrary, the evidence was given that employer's representative had beaten and abused the Petitioner workman, hence dismissal of Petitioner workman was wholly illegal. Lastly, he contended that in any case the charges levelled against the workman are not so grave as to warrant major penalty of dismissal. The punishment imposed upon the Petitioner workman is arbitrary, shocking and disproportionate to the charges levelled against him.

3. Though it is true that the Petitioner was dismissed from service without holding enquiry in extreme tense situation prevailing in the company, on account of which no enquiry could have been possible at the relevant time but before the Industrial Tribunal, Shri Ghakhar the senior officer of the company himself produced and gave evidence that the Petitioner workman and two others abused and assaulted him. He was rescued by other officers and workmen. Ram Karan fled away from the scene, but Petitioner, who fell down and received injury, was caught hold by other persons.

4. With respect to Petitioner, the Tribunal has discussed the matter in paragraphs 24 to 29, which reads as under:

24. Sri Ram Karan Workman was dismissed from service by means of order dated 3.6.1987 on account of the incident dated 2.6.1987 on the accusation that he had assaulted to Sri S.C. Ghakhar. It is mentioned in the dismissal order that he had gone to the mill on 2.6.1987 at 10.30 a.m. to attend an enquiry against him alongwith his representative Sri M.A. Dwivedi and Parsuram Pandey and other labourers assaulted Sri S.C. Ghakhar.

25. Sri S.C. Ghakhar, E.E.2 stated that he was abused and assaulted by Ram Karan alongwith Parsuram and M.A. Dwivedi. Sri Ghakhar stated in his cross-examination that the security guards tried to stop M.A. Dwivedi and Ram Karan but they managed to escape after beating guards.

26. Sri M.A. Dwivedi, W.W.2 has admitted that on 2.6.1987 he was present at the place of incident and that when Parsuram Pandey asked Sri S.C. Ghakhar as to why the enquiry is being conducted in his office instead of labour office Sri Ghakhar abused him. He said that several persons from the side of management came and assaulted him as well as his companions and also dragged them. He further stated that a file was snatched from the hands of Ram Karan and a slip was also snatched from him. He further stated that Ram Karan with Parsuram Pandey were beaten resulting in bleeding from the nose of Parsuram Pandey. He said that Sri Ghakhar was not beaten by him or his companions nor they had indulged into any scuffle with the security guards.

27. Sri Parsuram Pandey, W.W.4 stated that he was present at the time of the incident on 2.6.1987. He stated that he had asked Sri Ghakhar that when he was available in the labour office for a hour why he did call him in the general office if the inquiry was to be held there. Whereupon Sri Ghakhar caught hold of his caller and gave him a blow on the nose. He stated that he fell down and his nose

started bleeding. He stated that he remained lying unconscious outside the office for several hours.

28. Sri Ram Karan himself also appeared as a witness as W.W.5. He stated he alongwith his companions M.A. Dwivedi and Parsuram Pandey were called from the labour office to the office of Sri Ghakhar where Raja Ram Tiwari and Babu Ram Pandey were present from before. He stated that Sri Ghakhar had beaten him. He stated that was beaten by other persons also. He further stated that Parsuram Pandey was also beaten resulting in bleeding from the nose. He admitted that he ran away from the place of incident.

29. Sri Ram Karan has thus admitted that the maar-pit did take place in the office of Sri Ghakhar and at that time he was accompanied by Sri M.A. Dwivedi and Parsuram Pandey. Sri Ram Karan has claimed that he was beaten and so also Parsuram Pandey was beaten by Raja Ram Tiwari and Babu Ram Pandey. It may, however, be seen that Sri Parsuram Pandey has not named the two other companions. Sri Parsuram Pandey has stated that he was instrumental in getting the incident started as he had asked Sri Ghakhar as to why he was not called to the General office while he was present in labour office for a hour whereupon Sri Ghakhar had assaulted Parsuram Pandey and gave a blow to him. He said that Raja Ram Tiwari and Babu Ram Pandey had pushed him out of the office where he remained unconscious; for several hours. Sri Ram Karan has not said that the collar of Parsuram Pandey was caught hold by Sri Ghakhar or that he was given blow on the nose. Sri Ram Karan had also not said that that Sri Raja Ram Tiwari and Babu Ram Pandey had pushed Sri Parsuram Pandey out of the office or that Sri Parsuram Pandey remained lying unconscious. Sri Parsuram Pandey has not said that Sri Ram Karan and Sri M.A. Dwivedi was beaten by Sri Ghakhar or by Raja Ram Tiwari or Baby Ram Pandey.

5. The incident of maarpit has been admitted by the Petitioner, though he and two other workman narrated the story that all three were beaten by Sri Ghakhar and two others. This incidence and story narrated by Petitioner and other workman has been disbelieved by Tribunal. It would be appropriate to refer paragraphs 31 to 37 as under:

31. In my opinion, the account of incident as given by M.A. Dwivedi, Parsuram Pandey and Ram Karan is not correct. The three witnesses of the incident appeared on behalf of the workmen, in order to save themselves have given evidence regarding their beating and they claimed that the did not assault Sri S.C. Ghakhar which does not appear to be correct. In spite of grave provocation to the Union leaders Sri M.A. Dwivedi and Sri Parsuram Pandey it was unbelievable that Sri Ghakhar would not have been assaulted. In fact, the statement of Sri S.C. Ghakhar that he was assaulted seems to be correct and it appears that in order to save themselves Ram Karan, Parsuram Pandey and M.A. Dwivedi have given incorrect version of the incident.

32. The statement of Sri S.C. Ghakhar, therefore, has to be believed that the was

abused and beaten by S/Sri Ram Karan, M.A. Dwivedi and Parsuram Pandey. From the statement of Sri Ghakhar it is established beyond doubt that Sri Ram Karan and Parsuram Pandey had assaulted Sri Ghakhar on 2.6.1987 at about 10.30 a.m. in the office of Sri Ghakhar.

33. The Mill was already closed on account of strike and dharna and Pradarshan were going on. Sri Ram Karan was facing disciplinary enquiry in respect of any other incident dated 11.4.1987.

34. Sri Parsuram Pandey and M.A. Dwivedi had gone to defend Ram Karan in the departmental enquiry and had acted in most highhanded manner in abusing and beating the Enquiry Officer Sri S.C. Ghakhar who was Manager (Administration) of the opposite party.

35. In the given set of circumstances, such as Dharma, Pradarshan and strike it was not possible for the management to hold enquiry against Sri Ram Karan and Sri Parsuram Pandey.

36. Since Sri S.C. Ghakhar was abused and beaten by Sri Ram Karan, Sri Parsuram Pandey and Sri M.A. Dwivedi when Shri Ghakhar was to hold an enquiry relating to another incident dated 11.4.1987 in which Ram Karan was charged with misconduct. From the statement of Sri S.C. Ghakhar it stands established that Sri Ram Karan and Sri Parsuram Pandey had abused, assaulted Sri Ghakhar and it was an act of grave misconduct. The act of unruly behaviours and violence by Ram Karan who was already facing an enquiry and by his representative Sri M.A. Dwivedi, Parsuram Pandey they were guilty of serious and grave misconduct. The employers have thus established the grave misconduct of Ram Karan and Parsuram Pandey. The grave misconduct of which Sri Ram Karan and Sri Parsuram Pandey are guilty the punishment of dismissal from service seems to be the only appropriate punishment.

37. Sri Ram Karan and Sri Parsuram Pandey were, therefore, rightly dismissed from service. I have already held that the charges against Sri Raghunath Prasad Misra, Nawal Kishor Pathak and Awadhesh Kumar could not be established.

6. Learned Counsel for the Petitioner contended that industry was not closed and no body had been on strike but this stand was contradicted by workman's witness Awadhesh Kumar. His statement is on record as Annexure 10 to the writ petition, which shows that on 2.6.1987, he marked his attendance and thereafter, sat alongwith hunger strickers.

7. Learned Counsel for the Petitioner has not been able to show any perversity or contradictory findings in the award impugned in this writ petition.

8. He, however, submitted that this Court should hold that the Tribunal has erred in believing evidence of the employer while disbelieving evidence of workman and, therefore, the impugned award should be set aside.

9. Unless the approach of the labour Court is shown contrary to some statutory

provision or its findings are shown perverse, under Article 226 of the Constitution of India, the scope of judicial review did not permit this Court to sit in appeal like as appellate authority over the Tribunal and to appreciate evidence so as to find out whether one view is better than the other. If the view taken by the Tribunal is a permissible and possible view and there is nothing on record to show that it is perverse or contrary to the material on record, the Court under Article 226 of the Constitution of India will not interfere.

10. Believing or disbelieving the evidence is within the sole prerogative of the Tribunal and unless it is shown that in discarding one's evidence the Tribunal has acted with bias or has otherwise committed a perversity or error of law, merely because it has preferred to believe one's evidence vis-a-vis another, no interference is called for in exercise of jurisdiction under Article 226 of the Constitution of India.

11. Learned Counsel for the Petitioner could not show any other reason, which may vitiate the approach of the Tribunal warranting interference by this Court. The contention of the learned Counsel for the Petitioner therefore, that order of the Tribunal deserves to be set aside merely because it has believed the evidence of the employer and disbelieved the evidence of the workman has to be rejected.

12. Now, I come to the question, whether punishment is seriously disproportionate to the gravity of the charges.

13. The charge against the workman is that he abused and assaulted an officer of the company. The charge is ex facie quite serious. The question whether the management in the context of above charge, if had decided to dismiss the workman, would the punishment found justified by Tribunal is perverse and apparently illegal, whether it is open to this Court to interfere with such finding and decision of the employer.

14. In the matter of quantum of punishment the scope of judicial review and interference by the Court of law is quite restricted. The question of judicial scrutiny of disproportionate punishment, extent and scope has been considered in a catena of judgments by the Apex Court and this Court. It would be useful to refer some of those judgments, which are more apt in the facts of the present case.

15. In *Colour-Chem Limited Vs. A.L. Alaspurkar and Others*, it was held:

Consequently, it must be held that when looking to the nature of charge of even major misconduct which is found proved if the punishment of dismissal or discharge as imposed is found to be grossly disproportionate in the light of the nature of the misconduct or the past record of the employee concerned involved in the misconduct or is such which is no reasonable employer would ever impose in like circumstances, inflicting of such punishment itself could be treated as legal victimization. (para 13)

(emphasis added)

16. In U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, the Court referred to Section 11 of Industrial Disputes Act, 1947 and held, where the charge of misconduct found proved against the workman is serious, the Labour Court is not justified in interfering with the order of removal. In the aforesaid case, the charge against the workman was that he, in a drunken state, went to the Assistant Cashier in the cash room alongwith the Conductor and demanded money from the Assistant Cashier. When refused the workman abused him and threatened to assault him. The aforesaid charge was proved but the Labour Court held that the punishment of removal is not justified and, therefore, set aside the same. The Apex Court disapproving interference of Labour Court in the matter of punishment, observed as under:

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 punishment awarded to the Respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him.

17. In Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another, it was held that the punishment of dismissal awarded to the workman could have been interfered only if it is disproportionate to the misconduct proved by the workman and not otherwise. In Employers, Mgmt., M. Colliery, BCCL Ltd. Vs. Bihar Colliery Kamgar Union through Workmen, referring to Section 11 -A of the Industrial Disputes Act, 1947, the Apex Court held:

It is well established principle in law that in a given circumstances it is open to the Industrial Tribunal acting u/s 11 (A) of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment....

18. In Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others, the Apex Court after a review of the entire earlier case law observed as under:

This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of punishment.

(emphasis added)

19. In Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma, the Apex

Court, after a review of the entire earlier case law observed that punishment of termination of service awarded to a workman found guilty of breach of discipline cannot be said to be disproportionate or harsh.

20. In the matter of Transport Corporation itself, where workman is found guilty in financial matters, the Apex Court has held that the punishment of dismissal or termination is not disproportionate since such misconduct should not be dealt with leniently. In *Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another*, it was held:

It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision making process while considering whether the punishment is proportionate or disproportionate. If the charged employees holds a post of trustworthiness and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and exceptionable. Judged in that background, conclusions of the Division Bench of the High Court are not proper.

21. Similar contention was advanced in *Kailash Prasad Gupta v. Vice Chancellor/ President Executive Council, BHU and others*, 2010 (1) ADJ 731 (DB). The Division Bench of this Court in paragraphs 4 and 5 of the judgment held as under:

4. Normally in the matter of quantum of punishment once the charge is proved and punishment is not found to be shockingly disproportionate, this Court does not interfere with the discretion of the punishing authority in selecting the punishment and imposition thereof upon the employee concerned. It is also true that normally when a co delinquent is given lesser punishment, this itself is not treated to be a ground for interference as held by the Apex Court in *Balbir Chand Vs. Food Corporation of India Ltd. and others*, more so, where the allegations are slightly different. In *Balbir Chand (supra)*, the Apex Court also observed that if the authorities wrongly gave lesser punishment, compared to others against whom there is a major punishment, that itself would not be a reason to ask for a similar lesser punishment but in our case it is also not the case of the University that those employees in whose matters similar charge had been found proved and have been given lesser punishment, the same is on account of any mistake or error on the part of the University. Therefore, where the charges are similar, found proved, and the employer neither pleaded any mistake nor error in giving lesser punishment to some of the employees, while severe one in other cases, nor is in a position to show any distinguishing features between the two sets of employees, in our view in such a case, distinction is a writ large, and, the action of the employer in giving two sets of punishment to the employees would be arbitrary and violative of Articles 14 and 16 of the Constitution.

5. We repeatedly gave opportunity to the learned Counsel for the University to

point out any distinction between the Appellant and other six employees in whose cases despite having found similar charges proved, minor penalty was imposed though in the case of the Appellant, maximum penalty of dismissal has been chosen. He failed to point out any such difference. In this regard he has also filed counter-affidavit in reply to the supplementary affidavit but there from also we do not find any such distinction to deal with the case of the Appellant and some others differently than six others. In the case of Mahendra Kumar Chowkidar who had admitted to have filed forged marks sheet of Junior High School, the punishment of withholding of five annual increments with cumulative effect with no promotion or career advancement for ten years had been imposed. Similarly in the case of others also wherever the authorities have found serious charge of forged document, proved, in their discretion have taken a lenient view but in other matters a very strict view has been taken.

22. Division Bench also considered the decision of Apex Court in Sengara Singh and Others Vs. State of Punjab and Others, and in paragraphs 6 and 7 held as under:

6. Virtually a similar controversy came up for consideration in Sengara Singh and Others Vs. State of Punjab and Others, and, in the absence of any material finding distinction between the two sets of employees; one those dealt with leniently and others dealt with severely, the Apex Court held that those who were awarded serious punishment have been discriminated and in such a case, the Court must intervene. The relevant observations are reproduced as under:

Now if the indiscipline of a large number of personnel amongst dismissed personnel could be condoned or overlooked and after withdrawing the criminal cases against them, they could be reinstated, we see no justification in treating the present Appellants differently without pointing out how they were guilty of more serious misconduct or the degree of indiscipline in their case was higher than compared to those who were reinstated. Respondents failed to explain to the Court the distinguishing features and therefore, we are satisfied in putting all of them in same bracket. On that conclusion the treatment meted to the present Appellants suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution. The Court must accordingly interpose and quash the discriminatory action.

7. The above decision has been followed by the Apex Court in Baldev Raj, Ex-Constable Vs. State of Punjab and Others, and Harminder Singh and Others Vs. State of Punjab and Others,

23. Miss Bushra Maryam, learned Counsel for Petitioner also contended that six workmen were terminated and except two in respect to other, the Tribunal has set aside order of punishment, therefore, the Petitioner has been discriminated. He contended where lessor punishment or no punishment is awarded to one or more co-delinquent, major penalty to another would be illegal and arbitrary.

24. To my mind, this submission has also no locus to stand. The Tribunal has also considered this aspect in detail as to why termination of other workmen was not justified, though it was valid qua Petitioner and another workmen, need not to repeat it but express my concurrence in absence of any perversity.

25. However, even otherwise in law all this cannot be a reason to interfere in the order of punishment, which is otherwise justified, considering the nature of misconduct alleged to have been committed by the workman concerned.

26. Assault and abuse has been considered to be really a serious misconduct i.e. the perversity of misconduct. Recently, it has been held in catena of decisions that where employee is found guilty of abusing or assaulting a senior officer or employers, the employer in its decision has imposed punishment of dismissal, the Court shall not interfere in such punishment on the ground that it is disproportionate to the gravity of the charges of misconduct. By using abusive language or assaulting the employer is really a serious misconduct justifying major penalty.

27. The Apex Court in U.P. State Textile Corporation Spinning Mills, Jhansi v. State of U.P. and others, 1997 (75) FLR 45, has observed as under:

In the present case, the Respondent No. 3 has not only given abuses and threats but he has actually gone further and committed acts of violence. In my opinion, the industry cannot run if a person like the Respondent No. 3 is its employee, and hence the only punishment called for was dismissal. The tribunal, in my opinion, acted arbitrarily in interfering with the punishment of dismissal on the sentimental ground that such dismissal would mean economic death. A person like the Respondent No. 3 who behaves like a hooligan has to be dismissed otherwise the industry cannot run.

28. The Apex Court in a catena of cases has upheld punishment of dismissal for using abusive language. In Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., the workman abused the superior officers twice using filthy apology language, the Apex Court upholding the punishment of dismissal observed as under:

We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilized society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to herein above. (para 14)

29. In Employers, Mgmt., M. Colliery, BCCL Ltd. Vs. Bihar Colliery Kamgar Union through Workmen, held that kind of violence justify the stringent punishment and upheld the punishment of dismissal by further observing that substituting the order of dismissal by another minor punishment would be wholly disproportionate to the gravity of misconduct and cannot be upheld.

30. In Hombe Gowda Educational Trust and Anr. v. State of Karnataka and others, JT 2005 (10) 9 606, the Apex Court has held that in view of change of

economic policy of the country the earlier trend has undergone a major change and the Court seek to strike a balance between the interest of the workmen as well as employer. It has been held as under:

This Court has come a long way from its earlier view points. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach of the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed that how discipline at the workplaces/ industrial undertaking received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. (para 30)

31. The said view has been referred and followed in L.K. Verma Vs. H.M.T. Ltd. and Another, wherein it has held as under:

So far as the contention as regard quantum of punishment of concerned, suffice it to say that verbal abuse has been held to be sufficient for inflicting a punishment of dismissal. (Para. 22)

32. Normally, in the matter of quantum of punishment, once charge is proved and punishment is not found shockingly disproportionate, this Court would not interfere with the discretion of punishing authority in selecting punishment and imposition thereof upon the employee concerned.

33. It is also true that normally when a co delinquent is given lesser punishment, this itself is not treated to be a ground for interference as held by the Apex Court in Balbir Chand Vs. Food Corporation of India Ltd. and others, more so, Where the allegations are slightly different.

34. In Balbir Chand (supra), the Apex Court also observed that if the authorities wrongly gave lesser punishment, compared to others against whom there is a major punishment, that itself would not be a reason to ask for a similar lesser punishment.

35. Looking to various aspect of the matter, discussed above, in totality, I am of the view that the award impugned in this writ petition warrants no interference. It is not a case where serious misconduct of an employee regarding assaulting and abusing to superior managerial official of the company deserves to be viewed lightly by this Court. Any such approach would encourage indiscipline, result in creating more dispute than industrial harmony.

36. In the result, the writ petition, being devoid of merit, is dismissed.

37. No order as to costs.