
(1997) 08 GAU CK 0028
In the Gauhati High Court
Case No : Writ Appeal No. 554 of 1996

P.K.Das

APPELLANT

Vs

Presiding Officer, Labour Court, Guwahati

RESPONDENT

Date of Decision : 28-08-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 11, 11A, 11A

Citation : (1997) 2 GLJ 394 : (1997) 3 GLT 171

Hon'ble Judges : M.Ramakrishna, J and P.C.Phukan, J

Bench : Division Bench

Advocate : N.M.Lahiri, U.Barua, P.C.Deka, B.Goyal, S.K.Saha, Advocates
appearing for Parties

Judgement

M. Ramakrishna, C.J.—The appellant Shri P.K. Das has presented this writ appeal against the judgment and order dated 20.8.96 passed by the Hon"ble Single Judge in Civil Rule No.1623 of 1993.

2. A few facts which are necessary for the disposal of the appeal are as follows : The appellant was initially appointed as an employee of M/s Howrah Motor Company Ltd and posted to work at Guwahati. It is stated that later on he resigned from this company and joined M/s AMCO Batteries Ltd., Chatribari Road, Guwahati, respondent No.2, in the year 1971 as Senior Assistant.

The appellant was served with a show cause notice asking to show cause as to why disciplinary action should not be taken against his as per Annexure 2. The allegation was that on 17.4.80 at about 9.40 AM the appellant used impolite language and abused the Depot Manager of the respondent company. Based upon this allegation a domestic enquiry was held. On completion of the said enquiry, an order of discharge was made on 25.11.80. Since the appellant was a workman coming within the purview of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act", the Govt of Assam by an order dated 31 st July, 1981 referred the dispute to the Labour Court. Learned Presiding Officer of the Labour Court by order made on 16.5.84 took up the issue in relation to the

domestic enquiry as to whether the enquiry was fair and proper as a preliminary one and by the order made by the Labour Court the issue was decided in favour of the management. During the course of the said order, the Labour Court also considered whether the punishment of removal was justified in relation to section 11A of the Act. Finally, the Labour Court upheld the punishment order holding that in order to maintain discipline the removal of the appellant was justified. Therefore, learned Presiding Officer did not interfere with the order of the Tribunal.

3. Aggrieved by this order of the Labour Court, the appellant preferred Civil Rule No.888 of 1985 before this Court challenging the award of the Labour Court which was heard and disposed of by a Division Bench of this Court by an order made on 10th August, 1988 (1988 (2) GLJ 303). The Division Bench having gone through the facts and circumstances of the case and the questions of law including the findings of the Labour Court, held as follows :

" We, therefore, set aside award and the finding of the learned Tribunal under section 11A of the Industrial Disputes Act, 1947 regarding the quantum of punishment and remand the reference to the learned Tribunal with the direction that after hearing the parties, the learned Tribunal shall pass appropriate order in accordance with law."

It may be mentioned here that the Division Bench considering the view taken by the Labour Court as to the quantum of punishment came to the conclusion that it was a fit case for setting aside the order of the Tribunal and remitting the matter for reconsideration only regarding the quantum of punishment keeping in view the law laid down by the Supreme Court.

4. Thereafter the matter was reconsidered by the Tribunal. As there was some delay in the proceedings before the Tribunal, Civil Revision No.462 of 1991 was filed by the appellant Shri PK Das seeking for a direction to the Tribunal. Learned Single Judge of this Court by order dated 24th December of 1991 issued the following direction while disposing of the revision petition :

"This petition is disposed of with the direction that the learned Labour Court shall decide the question of quantum of punishment of the petitioner in accordance with the direction given by this Court in its judgment dated 10.8.88 in Civil Rule No.888 of 1985."

5. Pursuant to the said order, learned Labour Court after hearing learned counsel for both sides by order made on 12th February of 1993 while dealing with Issue No. 1 (b) held as follows :

"In view of my finding in the foregoing issue the normal relief available in favour of the workman is his reinstatement where there is no other adverse circumstances exist against him, and when there was not any allegation of impolite behaviour of the workman in any other previous occasions. In view of the findings and direction of the Hon"ble High Court I am of the view that

stopping of one increment of the workman in his present time scale will serve the purpose of ends of justice. He is entitled to be reinstated immediately with his full back wages. From the date of his reinstatement and increment in his present time scale should be stopped. The issue is answered accordingly." Dealing with issue No.2 (a) the Labour Court further held as follows :

"Evidence led by the workman does not show that during his service in any existing vacancy anybody who was junior to him, was promoted and posted to that vacancy ignoring his claim of promotion. Under these facts and circumstances there is no scope to give any concrete decision for promotion of the workman. However, it is directed that as and when any vacancy higher to the present assignment of the workman will arise his case of promotion should be considered by the management and he should be promoted accordingly to that post. The issue is decided accordingly."

6. Aggrieved by the order of the Labour Court, M/s AMCO Batteries Ltd, the second respondent herein, presented Civil Rule No. 1623 of 1993 challenging the award made by the Labour Court on the grounds taken in the said civil rule.

7. Learned Single Judge of this Court after hearing learned counsel for both sides, by order made on 20th August, 1996 allowed the writ petition quashing the award made by the Labour Court holding as follows :

"I have considered the submission of the counsel for the employee who relies on section 11A of the Industrial Disputes Act, 1947. In my view of the matter the construction of section 11A has nothing to do in the present matter. In the instant case Labour Court was directed by the Division Bench to consider the case of quantum of punishment as such it was obligatory on the part of the Labour Court to take fresh or other additional evidence to arrive and to give effect to the orders of the High Court."

Learned Single Judge further held as follows :

"In my view of the matter, the matter is remanded back to the Labour Court once again to decide the question of punishment and also the question of discipline in the office by taking fresh evidence of gainful employment of workman during the period of termination of his service. Secondly, question of reemployment of the workman is linked with discipline and loss of confidence. Thirdly, whether the order of reinstatement can be substituted by payment of lump sum damages/ With above direction the matter is disposed of. There will be no order as to costs."

8. Aggrieved by this order of the learned Single Judge, this writ appeal is filed by the appellant.

9. We have heard learned counsel for both sides.

Learned counsel for the appellant urged the following points in support of the appeal:

(i) the findings of the learned Single Judge that the award made by the Labour

Court was not in accordance with the direction of the Division Bench of this Court made in Civil Rule No.888 of 1985 may not be correct;

(ii) the approach of the learned Single Judge in construing the award as being contrary to the direction given by the Division Bench and thereby quashing the award is not correct:

(iii) the observation of the learned Single Judge referring to the evidence led by the parties in regard to section 11A of the Act and thereby making out a case in favour of the employer is not correct; and

(iv) since the award was found to be contrary to the direction of the Division Bench of this Court in Civil Rule No. 888 of 1985, the same is not sustainable in law.

10. Contrary to this argument of the learned counsel for the appellant, argument of the learned counsel for the respondents is :

(i) learned Single Judge was right in observing and setting aside the award on the ground that it was found to be in tune with the direction given by the Division Bench in Civil Rule No.888 of 1985;

(ii) the conclusion reached by the learned Single Judge is justified and this Court need not interfere with the said order.

11. Considered the thrust of argument of the learned counsel for the appellant. One of the legal contentions urged is that the payment of back wages should not be linked with the quantum of punishment. The view taken by the Labour Court to reinstate the employee being proper, the learned Single Judge ought not to have quashed the said award. Let us consider the direction given by the Division Bench while disposing of Civil Rule No.888 of 1985 dated 10.8.88. Referring to certain authorities of Supreme Court in regard to disproportionate punishment, considering the nature of offence or misconduct alleged against the employee, the Division Bench referred to misconduct on the part of the employee, in para 11 stating therein that:

"In the instant case the following words were used by the petitioner, viz. you shut up, you keep quite (sic), "mind your language, I shut up your mouth, "hold out tongue", "I warn you not to provoke me and learn to respect me, "mind you if I am to quit from this office, I will see you go first", if I am to die you will die with me."

12. Referring to this aspect of the misconduct and the language used by the employee, the Division Bench observed that:

"Keeping in view the law laid down by the Apex Court we are of the opinion that removal of the petitioner from service was not justified for using these words."

In the operative portion of the order in paragraph 13 the direction given to the Tribunal is as follows :

"We, therefore, set aside award and the finding of the learned Tribunal under section 11A of the Industrial Disputes Act, 1947 regarding the quantum of punishment and remand the reference to the learned Tribunal with the direction that after hearing the parties, the Tribunal shall pass appropriate order in accordance with law."

13. Therefore, we will have to consider whether the Tribunal proceeded to follow the direction contained in the Mandamus issued by the Division Bench. It appears to us on a careful consideration that the Tribunal failed to follow the correct method to consider as to the quantum of punishment, on the other hand it proceeded to decide other issues, including, reinstatement, promotion and backwages. No doubt, the consideration of payment of back wages and consequential benefits as required by section 11 has to be considered keeping in view the mandatory requirement of law. But the Tribunal swerved in the sense that it should have considered the scope of quantum of punishment alone. It is for this reason that the learned Judge found fault with the award.

14. In *Lalit Gopal Berry vs. M.V. Hirway & another*, 1973 Labour and Industrial Cases 929, a Division Bench of the Bombay High Court had the occasion to deal with a question that if there is a wrongful dismissal by the employer, the employee shall be entitled to back wages. But in such a situation the Court must take into consideration whether the employee was found to be employed elsewhere during the wrongful dismissal. Considering this aspect in para 6 of the judgment, the Division Bench held as follows ;

"Where a contract of service is wrongfully broken by the employer, the employee is entitled to payment of arrears of salary on the footing that the contract of employment had continued in existence. However, whatever he earned during the period for which he was effectively not maintained in service must be accounted for by him and to that extent the liability of the employer must diminish. The question whether an employee had been gainfully employed during the relevant period must ordinarily be raised and agitated not by the employee but by the employer in the proceedings before the Industrial Tribunal and/or the Labour Court."

15. This goes to show that it was the duty of the Labour Court to have recorded proper findings on this question with a view to enable the Labour Court to arrive at the quantum of punishment. Indeed, in the instant case, as observed by the learned Single Judge, the failure of the Labour Court to consider the evidence relating to gainful employment during the period of termination was not inconsistent with the order of the Division Bench which directed the Labour Court to decide the question of punishment. Therefore, if there is evidence led by the parties in regard to section 11A of the Act, Labour Court ought to have considered this question and recorded appropriate finding. This is one of the reasons why the learned Single Judge had to quash the award. Another reason given by the learned Single Judge is that the matter of construction of section 11A of the Act has nothing to do with the present matter. According to the

learned Single Judge since the Labour Court failed to follow the direction given by the Division Bench in regard to quantum of punishment which was obligatory on the part of the Labour Court, the impugned order was quashed.

16. There is one more important aspect of the matter which will have to be considered i.e. the stand taken by the second respondent/employer in all the three Courts is that by virtue of the reputation, conduct and the behaviour of the employee, the employee lost confidence of the employer. In such a situation whether it is open to the Court to award compensation by way of lump sum amount, instead of ordering reinstatement.

16A. There are authorities to show that in case where it has become almost difficult for the management to maintain a confidence of the employee regard being had to the nature of the allegations and misconduct, the Courts should not impose such employee by ordering reinstatement. On the other hand in *M/s Hindustan Steel Ltd vs. AK Roy*, (1970) 3 SCR 343 : 1970 (1) LLJ 228 the Supreme Court held that it has almost become settled principle that the reinstatement should not be awarded where the management justifiably alleges " that it has ceased to have confidence in the dismissed employee. Therefore, in the face of the fact that the appellante employee having lost confidence in the management, the order of reinstatement would result in imposition on the management and this does not serve the purpose. In such event the Court may think of awarding compensation by lump sum instead of reinstatement.

17. For the purpose of considering this aspect we will have to bear in mind the requirement of law in regard to the employee, whether he elsewhere earned the salary during the interregnum period. In *Gujrat Steel Tube Ltd vs. Gujrat Steel Tubes Mazdoor Sabha & others*, AIR 1980 SC 1896, a Bench of three Judges of the Supreme Court while construing section 11A held as follows :

"Dealing with the complex of considerations bearing on payment of back wages the new perspective emerging from Article 43 A of the Constitution of India cannot be missed. Labour is no more a mere factor in production but a partner in industry, conceptually speaking, and less than full back wages is a sacrifice by those who can least afford and cannot be demanded by those, who least sacrifice their large wages though can best effort, if financial constraint is the ground urged by the management as inability to pay full back pay to the worker... .."

It has further been held that:

"Though the normal rule, on reinstatement, is full back wages since the order of termination is nonest, even so, the industrial Court may well slice of a part if the workmen are not wholly blameless or the strike is illegal and unjustified."

18. In *M/s Hindustan Steel Ltd, Rourkela vs. AK Roy*, AIR 1970 SC 1401 referring to the provisions of section 11A of the Act held on facts and circumstances of the case that the Tribunal in awarding reinstatement exercised its discretion mechanically and that the refusal by the High Court in writ jurisdiction to

interfere with the discretion exercised by the Tribunal was equally mechanical and amounted to refusal to exercise its jurisdiction. In para 18 it has further been held that:

"The question next is, having held that the order of reinstatement was not a proper order, in that, it 7:35 not in consonance with the decided cases, do we simply quash the order of the Tribunal and that of the High Court and leave the concerned workman to pursue his further remedy. The other alternative would be to remand the case to the Tribunal to pass a suitable order. In either case, in view of this judgment, no other order except that of compensation can be obtained by him. If the case is remanded and the Tribunal on such remand passes an order of compensation and fixes the amount such a course would mean further proceedings and a possible appeal. That would mean prolonging the dispute, which would hardly be fair to or conducive to the interest of the parties. In these circumstances we decided that it would be more proper that we ourselves should determine the amount of compensation which would meet the ends of justice. Having come to that conclusion, we heard counsel for both sides. After doing so and taking into consideration all the facts and circumstances of the present case we have come to a the conclusion in the light also of the decisions of this Court such as Assam Oil Co vs. Its Workmen, 1960 (3) SCR 457 that compensation for a period of two years at the rate of .160/ per month, that being the last salary drawn by the concerned workman, would meet the ends of justice."

19. Thus, if there is sufficient evidence as to the amount of salary drawn by the workman and that regard being had to section 1.1 A of the Act if there is sufficient evidence as to whether the employee was gainfully employed during the interregnum period, then there is no need for us to remand the matter to the Labour Court for doing so. But for want of this evidence in the instant case, to our mind it is not possible to record appropriate finding as to the quantum of compensation payable in lieu of reinstatement. It appears that it is for this reason that the learned Single Judge had to remit the matter for reconsideration with a direction to the Labour Court to collect evidence from both parties on the above points.

20. Thus, therefore, we do not find force in the submissions of the learned counsel for the appellant. In the result, the appeal is dismissed.

The direction given by the learned Single Judge in Civil Rule No. 1623 of 1993 dated 20.8.96 to the Labour Court to record evidence of both parties as to the wages and salaries drawn by the employee, whether the employee was gainfully employed during the period of dismissal and whether the order of reinstatement :an be substituted by payment of lump sum amount by way of damages must be complied with.