
(2014) 01 RAJ CK 0243

In the Rajasthan High Court

Case No : Civil Special Appeal No. 381 of 2008

Pradeep Siroya

APPELLANT

Vs

Hindustan Zinc Ltd.

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

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

Citation : (2014) LabIC 2919

Hon'ble Judges : Amitava Roy, C.J.;Vijay Bishnoi, J

Bench : Division Bench

Advocate : R.R. Vyas, Advocate for the Appellant; Rajesh Joshi, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—The instant appeal witnesses a challenge to the judgment and order dated 19.3.2007 analogously disposing of two proceedings i.e. SBCWP No. 1380/1995 instituted by respondent No. 1 herein and SBCWP No. 727/1996 by the appellant. Whereas the management/respondent No. 1 herein invoked the writ jurisdiction of this court being vexed by the determination of the learned Labour Court, Udaipur moderating the penalty of termination of the service of the appellant herein as a disciplinary measure to one of stoppage of two grade increments with cumulative effect, the appellant sought the intervention of this court to interfere with its (Labour Court) conclusion that the domestic enquiry culminating in the penalty of termination of service was valid. By the impugned judgment and order, the impugnement mounted by the appellant was negated and the penalty of termination of service of the appellant was restored. We have heard Mr. R.R. Vyas, learned counsel for the appellant and Mr. Rajesh Joshi, learned counsel appearing on behalf of the respondents.

2. Facts indispensable for the instant adjudication are that the appellant, who at the relevant time, was a Senior Assistant in the Store Department of the respondent Management i.e. M/s. Hindustan Zinc Limited, was served with a

memorandum of charges dt. 23.7.1990 pertaining to certain incidents at the work place that had occurred on 7.7.1990 and 22.7.1990 involving him. The contents of the memorandum of charges to the extent relevant, are quoted hereinbelow:

- "a) Use of abusive language for superior employees.
- b) Riotous and disorderly behavior with your colleagues in the office during office hours and thereby committing acts subversive of discipline.
- c) Assaulting and threatening superiors employee of the Company within the mine premises.
- d) Willful violation of Standing Orders."

The above charges are based on the following allegations:

"It has been reported in writing by your colleagues that you are in habit of exhibiting disorderly behavior and using abusive language in the office during the office hours for superiors.

You are also in habit of talking about casteism and other unwanted affairs in the office. Whenever your colleagues advise you to stop such action you become angry and start threatening to them.

On 7.7.1990 you were on duty. At about 3.30 p.m. you were using abusive language for GM. While doing so, your other colleagues like S/Shri. Pradeep Kumar Yagnik, (Sr. Assistant, E. No. 32289,) Shyam Sunder Paliwal (Sr. Assistant. E. No. 32111) & Dinesh Chandra Daglia (Sr. Assistant, E. No. 32315) advised you to stop such use of abusive language for superiors. Instead of taking advise of your colleagues in good spirit and used the following language before them.

(Vernacular matter omitted.....Ed.)

Thereafter, you took a paper weight in your one hand and single punch in the other hand and rushed to beat them.

Thereafter, these employees submitted a written complaint against you for necessary action. Since, these allegations were of serious nature, the undersigned decided to meet with you and enquire about the incident. With this in view, the undersigned visited personally the office of Shri. P.L. Gehlot, Manager (Materials) (under whom you are working) at about 4.15 p.m. on 22.7.1990. I called Shri. R.C. Bhatnagar, Manager (Materials) and you to enquire into the incident on 7.7.1990. While enquiring into the incident you started giving irrelevant reply and not talking to the points. As a result, I asked you to go to your seat. After going to your seat, you started threatening your other colleagues who had given the written complaints dated 9.7.1990. After the order of suspension was signed by the undersigned and handed over to Shri. R.C. Bhatnagar, Manager (Materials) for serving the same to you.

It was reported that you refused to accept the order No. HZ L/(S & P)/Pers/90/ dated 22.7.1990 when you were asked to receive it by Shri. VS. Jayavalsan. Shri. Jayavalsan came to the chamber of Shri. Gehlot and returned the order undelivered to Shri. Gehlot in the presence of Shri. Bhatnagar and the undersigned. Shri. Gehlot called you in his chamber and advised you to receive the letter. You again refused to accept the letter and told that all the problems were created by Shri. R.C. Bhatnagar, Manager (Materials). Thereafter, I again advised you to take the delivery of said order, but you became suddenly violent and attacked Shri. Bhatnagar with a blow. When Shri. Bhatnagar tried to save himself, you hit him on shoulder and threatened him and his family members of dire consequences.

Thus, you are guilty of committing the acts of misconduct as mentioned above. This amounts to acts of misconduct in accordance with Certified Standing Orders under Clause No. 18(18), (22), (28) & (36)."

3. As the materials on record would disclose, even prior to this memorandum of charges, there was an occasion earlier for such a step to be taken on 16.4.1990 arising out of the allegation of misconduct against the appellant for his misbehavior with the higher authorities of the management. The proposed disciplinary action was however dropped, as the appellant in writing accepted his mistake.

4. Be that as it may, in respect of the memorandum of charges, the appellant offered his written explanation, which not having been found to be satisfactory, an enquiry was undertaken in which witnesses for the management as well as the appellant workman were examined. Eventually, the Enquiry Officer submitted his report on 19.1.1991 holding the charges against the appellant workman to be proved. The Disciplinary Authority on a consideration of the materials on record available pertaining to the issue, terminated his services. An industrial dispute was raised and eventually, the same was referred to the learned Labour Court, Udaipur in the following terms:

"Whether the action of the Management, Rajpura Dariba Mines, M/s. Hindustan Zinc Ltd., in terminating the services of Shri. Pradeep Siroya son of Shri. Sardar Singh, Senior Assistant, Employee No. 32168 w.e.f. 19.1.1991 is justified and legal? If not, to what relief the workman is entitled?"

5. Before the learned Labour Court, amongst others, a photocopy of the entire records of the domestic enquiry was laid and on a thorough scrutiny thereof as well as the evidence adduced by both the sides, the learned Labour Court held the domestic enquiry to be invalid. It, however, on a consideration of the fact that during the 12 years of his services, the appellant had been administered caution only once and that not even a minor penalty had been awarded to him and further it was not unusual that at times, mere may be such charge and emotional situations/contingencies involving the employees and the higher ups, interfered with the penalty of termination and in lieu thereof, accorded penalty of

stoppage of two grade increments with cumulative effect. In deciding on this penalty, the Labour Court, Udaipur was also of the view that though the incidences of 7.7.1990 and 22.7.1990 did not call for further comments, penalty of termination of service would result in irreversible financial crisis for him. Further, with this background, the prospects of his employment in future would be greatly diminished. That at the relevant time, he was also mentally disturbed and that in his statement, he had sought apology for his misbehavior, was noted as well.

6. To reiterate, by the judgment and order impugned, the learned single Judge rejected the challenge to the finding of the Labour Court, Udaipur on the validity of the domestic enquiry and restored the penalty of termination of service. In reaching this conclusion, an indepth scrutiny of all relevant facts was undertaken and the relevant excerpts of the decision assailed, as narrated hereunder, would amply demonstrate the same:

"In the present case, the charges pertain to volatile behavior of the workman with his colleagues and senior officers of the establishment. All the witnesses produced by the prosecution in quite unambiguous terms stated that on 7.7.1990 the workman used abusive language for higher officials and for his colleagues, he also tried to hurt Shri. Shyam Sunder Paliwal by the paper weight. With regard to incident dated 22.7.1990 Shri. R.C. Bhatnagar and Shri. R.L. Gehlot have stated without any hitch that the workman abused them and also assaulted Shri. R.C. Bhatnagar. From reading of the statements which are part of the record, I am also satisfied that the workman used most abusive and derogative language for his senior officers and other colleagues. It is true that Shri. Shivanan Jappa despite being disciplinary authority appeared as a witness before the inquiry officer and supported the case of prosecution but from reading of his statement it appears that he was trying to pacify the workman on the day concerned. From his statements it nowhere reflects that he was having any prejudice and bias towards the workman. Irrespective of that even, if, the statements of Shri. Shivanan Jappa be ignored, a reasonable person could have reached at the conclusion that the workman was guilty of a grave misconduct. It is pertinent to be noticed that even the defence witness Shri. P.K. Bhardwaj to great extent supported the story of prosecution. The two other defence witnesses viz. Mukhtiar Singh Maan and Ramlal have not said anything that may be relevant to prove innocence of the workman in any manner. The totality of the facts and circumstances of the case does not prove any likelihood of bias in present matters.

Under Section 11-A of the Act of 1947 a discretion is vested with Labour Court in interfering with quantum of punishment awarded by the disciplinary authority where the workman is found guilty of misconduct. Such a discretion can be exercised if the punishment is shockingly disproportionate to the gravity of misconduct so as to disturb the conscience of the Court. In the instant matter the volatile attitude of the workman qua his colleagues and higher officials is

proved beyond any shadow of doubt. Such type of conduct adversely affects administrative and functional order of an establishment. The indiscipline to the extent for which the workman is found guilty deserves to be dealt with seriously. Learned Labour Court has modified the punishment imposed by the disciplinary authority on compassionate and sympathetic consideration which according to me are not relevant. There is nothing on record on basis of which an opinion can be formed that punishment awarded was shockingly disproportionate to the charge proved. Learned Labour Court, therefore, exercised the discretion vested with it erroneously. In view of it the writ petition preferred by the employer deserves acceptance."

7. The only submission made on behalf of the appellant is qua the aspect of proportionality of the penalty awarded. Mr. Vyas has emphatically urged that having regard to the attendant facts and circumstances and more particularly, the oppressive workload leading to uncontrollable anxiety and tension, the incidents of 7.7.1990 and 22.7.1990, by no means, do demonstrate any incorrigible trait of the appellant and the penalty of termination of service, being grossly disproportionate, ought to be interfered with. According to the learned counsel, the Labour Court in exercise of its power u/s 11A of the Industrial Disputes Act (for short, hereinafter referred-to as "the Act") having substituted the penalty of termination of service by that of stoppage of two grade increments with cumulative effect, on an elaborate consideration of all aspects, factual and legal, no interference therewith ought to have been made and on this count alone, the impugned judgment and order is liable to be set aside.

8. To reinforce his argument, learned counsel has placed reliance on the decisions of the Apex Court in (i) Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., and (ii) Subhash Vs. The Divisional Controller, Maharashtra State Road Transport Corporation and Another,

9. Learned counsel for the Management in reply has urged that having regard to the insolent, indecent, rebellious and disregardful conduct of the appellant having the potential of destroying the institutional norms of discipline for his proved misconduct, the penalty of termination of service was rightly awarded on a consideration of all aspects bearing on his service career. The learned labour Court in interfering therewith was greatly swayed by sentimental considerations, while leaving out of consideration the adverse impact thereof on the overall organizational well being. The learned single Judge having analyzed the relevant facts in the correct perspective, the restoration of penalty of termination of service in view of the state of law on the issue is unassailable and, thus, the appeal ought to be dismissed, he urged.

10. Mr. Joshi has placed reliance on the decisions of the Apex Court in (i) Union of India (UOI) and Others Vs. Narain Singh, (ii) Employers, Mgmt., M. Colliery, BCCL Ltd. Vs. Bihar Colliery Kamgar Union through Workmen, so as to fortify his stand.

11. We have duly considered the pleaded facts and other materials on record. We have applied ourselves to the arguments advanced. Having regard to the limited aspect of the debate i.e. proportionality of the penalty, it is inessential to dwell on the other facets. A bare look into the charges leveled against the appellant and proved in a domestic enquiry, held to be fair and valid, demonstrates unequivocally the gravity & seriousness of the misconduct committed by the appellant. Not only in course of incidents of 7.7.1990 and 22.7.1990 did he use abusive words against his higher authorities and his colleagues, he as well displayed a riotous and disorderly behavior and even assaulted and threatened his superior employees in willful violation of the standing orders. Significantly, as has been noted by the learned single Judge in the domestic enquiry, even his witnesses did support the charge. His plea that he was at the relevant point of time, harassed and vexed by oppressive workload and the output unreasonably demanded of him and that, therefore, on the spur of moment, he had conducted himself as alleged, by no means, according to us, can be an extenuating circumstance to ensure to his benefit.

12. The decisions cited on behalf of the appellant, in our view, also do not advance his case. As it is, though penalty by way of disciplinary measure logically has to be commensurate to the proved charge and the misconduct portrayed thereby, there is no straight-jacket formula in this regard. Determination of penalty, to start with, is an exercise in the exclusive domain and discretion of the employer, the end purpose thereof being to ensure that thereby probity, discipline and orderliness in the establishment is maintained and the morale of the committed and sincere incumbents thereof is sustained.

13. Vis a vis Section 11A of the Act, it has been held time out of number and amongst others, in Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., that though thereunder, certain amount of discretion is vested with the Labour Court/ Industrial Tribunal to interfere with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct, the contours thereof are well defined and certainly not unlimited. Such a discretion, their Lordships held, is exercisable only on the existence of certain factors i.e. punishment being disproportionate to the gravity of misconduct stirring the conscience of the court or any mitigating circumstance justifying reduction of the sentence or past conduct of the workman warranting such a considerate initiative. It was held that in absence of any such factor, the Labour Court cannot by way of sympathy alone, exercise the power u/s 11A of the Act and reduce the punishment. In the contextual facts, their Lordships, having noticed that abusive language used by the workman against his superior officer, could be such that it cannot be tolerated by the society and that too, in the presence of the subordinates, concluded that such an indisciplined conduct did not call for any punishment lesser than that of dismissal, as imposed.

14. In the attendant facts and circumstances, we are of the unhesitant opinion that the misconduct established by the proved charges leveled against the

appellant will not justify interference with the penalty of termination of his service. None of the factors as recognized in Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., as a mitigating circumstance, does exist in the instant case and in our view, if the penalty awarded by the learned labour court is sustained, it would be a retrograde step compromising with the institutional precepts of discipline qua the respondents' establishment. The factors taken note of by the learned Labour Court, in our view, are not persuasive enough to reduce the penalty of termination of service of the appellant. The approach of the learned labour Court, according to us, was predominantly based on sympathy, which is indeed not decisive. For an incumbent guilty of misconduct, it is not necessary that he/she ought to be repetitive of the omissions or commissions constituting the same and depending on the singular fact situation, his or her conduct if found to be wholly subversive of organizational discipline, the employer concerned would be justified in terminating his/her services.

15. Judged on the above touchstone, we find ourselves in complete agreement with the conclusions recorded by the learned single Judge and see no reason to interfere with the impugned judgment and order. Resultantly the appeal fails and is dismissed.