
(2006) 07 JH CK 0029

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 3834 of 19995 (r)

Projects and Development India Limited

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 1 BLJR 161 : (2006) 4 JCR 529

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; Dilip kumar sinha, J

Bench : Division Bench

Advocate : K.B. Sinha and Amitabh, Pradip Modi, G.P. 1, for the Appellant; A.K. Mehta and A.K. Das for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition has been preferred by the petitioner - Management of Projects & Development India Limited against the Award dated 8th September 1995 pronounced on 19th November, 1995, passed by the Presiding Officer, Labour Court, Dhanbad, in Reference Case No. 7 of 1993, whereby and whereunder, the Presiding Officer, Labour Court, Dhanbad, while held that the Management failed to justify its action taken in regard to the dismissal of the concerned workman (2nd respondent herein), set aside the order of dismissal and reinstated the workman in service with full back wages and other consequential benefits.

2. As the case can be disposed of on a short point, it is not necessary to discuss all the facts, except relevant one as mentioned hereunder:

The workman was preceded departmentally for charges of theft, fraud, dishonesty, deception, corrupt practices in connection with Company's business/ property/ work of the Company and for misappropriating the Company's fund temporarily. Following charge was leveled against him:

That you claimed L.T.C. amount of Rs. 5950.00 only in the year 1981 indicating

the travel made by yourself and your family members from Nirsa to Trivendrum by Luxury Coach Bus no, WMH-6231 belonging to Dipti Travel a Traveling Agent having Govt. Regd. No. 1938, Nirsa, G.T. Road. You have shown your travel from 5.1.81 and return on 22.1.81. On enquiry it was observed that there was no Dipti Travels registered at any time having its registered office at Nirsa. The Regd. No. WMH-6231 was in favour of a Dumper and it is belonging to Eastern Coalfields Ltd. Santoria, Burdwan, P.O: Disergarh, Kustorea Area. Thus, you have submitted a false bill of having traveled through Dipti Travels Luxury Coach Bus No. WMH-6231 and submitted a forge documents

for claiming the amount Rs. 5950/- against which you have received from the management an amount of Rs. 5432/-

3. In the departmental proceeding he was given opportunity and the Enquiry Officer on appreciation of evidence came to a definite finding that the workman produced forged document for claiming L.T.C. amount and received some amount from the Management. The decision was forwarded to the workman and after receipt of the reply, he was dismissed from service by the order dated 19th June 1992 (Ext. M-14).

4. At the instance of the workman, the Government of Bihar vide its notification No. III/D2-5017/92 L and E-1492 dt. 18th September, 1993 referred the following dispute for adjudication by the Labour Court, Dhanbad:

Whether the termination of services of Sri P.V.P. Rao-Senior Technician, Project and Development India Ltd. Sindri Dhanbad is proper ? If not whether he should be reinstated on the job or/ and should be given compensation?

5. As stated above the reference was answered in favour of workman by the impugned Award dated 8th September 1995 pronounced on 19th November, 1995.

6. Learned Counsel appearing on behalf of the petitioner assailed the Award on the following grounds:

(a) The Labour Court answered the award in favour of workman though the evidence is otherwise, not based on evidence; and

(b) The quantum of punishment of dismissal from service can not be stated to be disproportionate to the gravity of charge as held by Labour Court.

7. On the other hand, according to the learned Counsel appearing on behalf of the 2nd respondent the Award of the Labour Court being based on appreciation of evidence, the High Court should not interfere with the same while exercising power under Article 226 of the Constitution of India.

8. In this case we are not inclined to go into the merit of the charges nor inclined to re-appreciate the evidence. We have noticed the finding of the Labour Court to find out whether it is perverse or not.

From the impugned Award, it will be evident that the substantive charge that the workman produced forged document to claim L.T.C. amount has been proved by the Enquiry Officer, which has not been disputed nor altered by the Presiding Officer, Labour Court, Dhanbad,. From the charge and the Exhibits as discussed by the Labour Court, Dhanbad, it will be evident that the concerned workman produced a Ticket -cum-receipt no. 158 dated 30th January 1981 of one Dipti travel, a traveling agent, having Govt. Regd. No. 1938, Nirsa G.T. Road, Nirsa district Dhanbad as proof of traveling of his family members from Nirsa to Trivendrum and back and he claimed for L.T.C. reimbursement on the basis of the aforesaid Ticket-cum-receipt. The vehicle number was shown as WMH-6231, a luxury Deluxe bus Coach. The petitioner - management alleged that the ticket-cum- receipt as was submitted by the workman was forged and his family members had not traveled from Nirsa to Trivendrum and back and that the workman claimed and received L.T.C. reimbursement on the basis of such forged document. On the basis of evidence, the enquiry officer also held the charge proved.

9. Before the Presiding Officer, Labour Court, the petitioner-Management produced Ext. M-18, a letter dated 10th December 1991, written by the Management to the District Transport Officer, Assansol (West Bengal) to know whether any such vehicle No. WMH 6231 has been registered at his end as Luxury Deluxe Coach and whether it was plying for Dipti Travel in long routes. It was also requested to inform whether any bus permit No. 37204 STAW. B was issued for the said bus or not. In reply to the said letter, the Registering Authority, Burdwan at Assansol, vide letter dated 5th October 1994 (Ext. M-21) informed that the vehicle no. WMH 6231 was not allotted to any other vehicle prior to January 1981 that means there was no occasion for the workman to travel by such bus in the year 1981. It was also informed that the vehicle No. WMH 6231 was allotted to a Dumper as is evident from Ext.M-21. On the request of Management of the petitioner as was made vide letter No. 26th September 1991 (Ext. M-22), Officer Incharge, Nirsa Police station , Dhanbad, informed that there was no Agency named as Dipti Travels Govt. Regd. No. 1938 Nirsa G.T. Road, Nirsa, available in the year 1981 at Nirsa.

10. Those evidence were placed before the Presiding Officer, Labour Court, Dhanbad, who discussed all the evidence and after discussion and appreciation of such evidence while the Presiding Officer, Labour Court, Dhanbad, did not differ with the finding of the enquiry officer, it was accepted that the charge of preferring false L.T.C. claim was proved. This will be also evident from the following observations of the Presiding Officer, Labour Court, Dhanbad:

In my opinion charge of preferring false L.T.C. claim cannot be said to be of that magnitude so as to impose punishment of economic death. The punishment of dismissal imposed on the workman is too harsh and interference of Labour Court is mist on this account alone .

11. Having so observed the Presiding Officer, Labour Court, Dhanbad, set aside

the dismissal order and reinstated the workman with full back wages without altering the punishment of dismissal to any other lesser punishment.

12. Now only question arises for determination as to whether dismissal from service of an employee for making false L.T.C. claim can be said to be proportionate to the gravity of charge.

13. Similar issue fell for consideration before Punjab & Haryana High Court in the case of Rajpal v. Presiding Officer, Labour Court, Faridabad and Ors. reported in 2000 LLR 1030. In the said case, the employee claimed bogus Leave Travel Concession by producing forged document. In the domestic enquiry the Enquiry Officer held the charges proved, and the Management dismissed the workman, the Court held that the punishment was a proportionate to the gravity of charges. In that case also the charge of producing forged document to claim Leave Travel Concession has been proved.

14. It is not the question as to whether false claim of Rs. 5,000/- (Five thousand) or Rs. 50,000/- (Fifty thousand) has been made by the employee or not, The question is as to whether the Management can trust on such employee/workman for allowing him to continue in services of the Management. We are of the opinion that the employee, who produces forged documents before its employer and thus, played theft, fraud or dishonesty or deceived its employer, it is always open to the Management to dismiss such corrupt employee and the order of dismissal from service in such case-cannot be held to be disproportionate. On the other hand, if lower punishment is imposed for such alleged act of omission and commission that may be termed to be disproportionate to the gravity of the charge.

15. For the reasons and discussion as made above, and the grounds as shown, we have no other option but set aside the impugned Award dated 8th September 1995 pronounced on 19th November, 1995, passed by the Presiding Officer, Labour Court, Dhanbad, in Reference Case No. 7 of 1993. The said Award is, accordingly, set aside. This writ application is allowed, but there shall be no order as to the costs.