

(1994) 03 RAJ CK 0055
In the Rajasthan High Court
Case No : C.W.P. No. 1534 of 1993

Rajasthan State Road Transport Corporation	APPELLANT
Vs	
Kailash Chand Sharma and Another	RESPONDENT

Date of Decision : 29-03-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1995) 1 LLJ 268 : (1994) 2 WLC 191 : (1994) 1 WLN 433

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Manish Bhandari, for the Appellant; P.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Award dated December 20, 1991 passed by the Labour Court, Bharatpur is under challenge in this writ petition filed by the R.S.R.T.C. (the petitioner Corporation) under Articles 226 & 227 of the Constitution of India.

2. Facts of the case are that workman Kailash Chand Sharma was appointed as Conductor at Alwar Depot of the petitioner Corporation. His bus was checked on October 30, 1980 by the inspecting party near Alwar and it was found that there were some passengers from whom fare had been collected but tickets have not been issued. On the basis of a report submitted by the inspecting party, a domestic enquiry was initiated against the workman vide charge sheet dated November 27, 1980. After holding the domestic enquiry, the Corporation removed the workman from service by an order dated August 10, 1982. Termination of service of the workman became subject matter of reference which the State Government made to the Labour Court, Bharatpur for adjudication vide Notification dated January 23, 1989.

3. Before the Labour Court the workman pleaded that enquiry proceedings had not been held in accordance with the provisions of the R.S.R.T.C. Workers and Work Shop Employees Standing Orders, 1965 and the principles of natural

justice. He had not been given opportunity to cross examine the witnesses and the documents which were produced by the employer were not made available to the workman. He also pleaded that the important witness namely the driver of the bus had not been examined even though he had submitted an application for this purpose. The Corporation contested the claim of workman and pleaded that the workman had been rightly found guilty of carrying passengers without ticket even though he had collected fare from them.

4. On the question of fairness of the enquiry, the Labour Court passed order dated March 12, 1990 and held that the enquiry was wholly unfair. The Labour Court observed that the entire enquiry proceedings had been completed in one day's time and proper opportunity of defence was not given to the workman. However, taking note of the request made by the employer, the employer was permitted to lead evidence to prove the allegation of misconduct by leading evidence. On behalf of the Corporation Shri Manguram, Traffic Inspector, appeared as witness and the workman made his own statement. Proceedings of enquiry were also filed before the Labour Court.

5. After considering the evidence of rival parties, the Labour Court recorded a finding that when the bus was checked, eight passengers were without ticket. The Labour Court also held that the workman's statement that he could not issue tickets because there was no light in the bus, is not worth believing. The Labour Court held that the allegation levelled against the workman stands established. Notwithstanding this finding on the charge levelled against the workman, the Labour Court proceeded to observe that even if the charge is held to be proved, the Corporation can at the best be said to have suffered a loss of Rs. 8/- and that there was no evidence of prior misconduct against the workman. On this premise, the Labour Court held that punishment of removal from service awarded to the workman was very harsh and it was justified to reduce the penalty. In the result, the Labour Court held that although the charge stands proved against the workman, the punishment of removal deserves to be modified from one of removal from service to that of stoppage of three grade increments with cumulative effect and denial of back wages.

6. In support of the writ petition Shri Manish Bhandari, learned counsel, has argued that once the Labour Court has recorded a finding that the workman had committed a delinquency of carrying passengers without ticket after collecting fare from them, it was not open to the Labour Court to have interfered with the quantum of punishment even by exercising its power u/s 11A of the Industrial Disputes Act, 1947. Shri Bhandari argued that cases of theft, dishonesty, fraud, misappropriation and embezzlement of public funds, form a class by themselves and no indulgence deserves to be shown to the employees who are found guilty of such acts. Shri Bhandari strenuously argued that in such like matters the Labour Court cannot interfere with the punishment awarded to the workman. He placed reliance on the decision of this Court in S.B. Civil Writ Petition No. 9/85 R.S.R.T.C. and Anr. v. Presiding Officer, Labour Court, Kola and Anr. decided on

October 7, 1992. Shri P.K. Sharma, learned counsel for the workman, on the other hand argued that even though the Labour Court may have recorded a finding that the charge stands proved against the Workman, it had full jurisdiction to modify the penalty of removal from service imposed on the workman. Shri Sharma argued that jurisdiction conferred on the Labour Court u/s 11A of 1947 Act is wide enough to entitle the Labour Court to interfere with the penalty of removal from service and substitute it by a lesser penalty. Shri Sharma argued that proceedings before the Labour Court had consumed almost nine years and the Labour Court had imposed a very heavy punishment on the workman by denial of full back wages and even withholding of three grade increments with cumulative effect. Shri Sharma argued that exercise of the discretion in this matter by the Labour Court cannot be termed as perverse and therefore, there is no justification for this Court to interfere with the impugned award.

7. There is no disagreement between the parties that the service conditions of the employees engaged as Conductor in the service of the Corporation are governed by the provisions contained in the Standing Orders of 1965. Clause 34 of these Standing Orders enumerates the acts and omissions which are treated as misconduct. Clause 35 deals with the suspension etc. Clause 36 lays down that one or more of the penalties specified in that clause may be imposed on a worker by a competent authority. Clause 34(i) describes the acts of dishonesty, fraud, theft, malpractice or misappropriation of cash or property as misconduct. Clause 36(vii) provides for termination of service which shall not be a disqualification for future employment and Clause 36 (viii) provides for dismissal from service which shall be a disqualification for future employment. These provisions show that if an employee who is governed by the provisions of the Standing Orders commits an act of dishonesty or commits fraud, theft, malpractice or mis-appropriates the property of the Corporation, the competent authority is free to impose any of the penalties specified in Standing Order No. 34 including termination of service or dismissal.

8. Section 11A was inserted by the Industrial Disputes (Amendment) Act, 1971. By enacting Section 11A the Parliament has conferred statutory power on the Labour Courts/Tribunals/National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. By exercising power u/s 11A the Labour Courts/Tribunals/National Tribunals are entitled to set aside an order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions as it thinks fit. However, power u/s 11A can be exercised only on fulfilment of the conditions enumerated in that Section, namely, that the Labour Court/Tribunal or the National Tribunal must be satisfied that the order of discharge or dismissal was not justified. However, conferment of wide power on the Labour Court/Tribunal or National Tribunal to set aside the order of discharge or dismissal does not mean that in each and every case the Labour Court/Tribunal or National Tribunal has got untrammelled power to interfere with the punishment imposed by the employer. The power has to be exercised only after

the Labour Court, Tribunal or National Tribunal is satisfied that the order of discharge or dismissal was not justified. The satisfaction of the Labour Court, Tribunal or National Tribunal is not a subjective satisfaction but clearly an objective satisfaction. This obviously involves application of mind by the Labour Court, Tribunal or National Tribunal on various relevant circumstances, like the nature of delinquency committed by the workman, his past conduct, the impact of the delinquency on the employer's business/industry as also the total length of service rendered by the workman. That apart the Labour Court, Tribunal or National Tribunal is required to consider as to whether the decision taken by the Management is just or not. Only after due consideration of these factors, the Labour Court, Tribunal or National Tribunal can upset the punishment imposed by the employer. Interference cannot be done by the Labour Court, Tribunal or National Tribunal with the quantum of punishment without recording a specific finding in the manner aforesaid and after consideration of the material circumstances.

9. What the Labour Court has done in the present case is that after holding that the charge levelled against the workman stands proved, it has straightway recorded a further conclusion that the punishment of removal from service awarded to the workman is very harsh. While recording this conclusion the Labour Court has been influenced by two circumstances, namely, (i) loss suffered by the Corporation is quite insignificant and (ii) that the workman has not been found guilty of any previous misconduct. In my opinion, both these circumstances are wholly irrelevant. In fact the Labour Court has completely overlooked the fact that an act which amounts to a dishonest conduct on the part of workman, constitutes a grave misconduct. Merely because the total pecuniary loss suffered by the Corporation was less an order of termination could not have been upset by the Labour Court ignoring the nature of the delinquency. The fact that no previous act of misconduct was found proved against the workman, was required to be looked in the context of the total service rendered by the workman. The workman had not rendered service of years together. If he had rendered five to seven years' service, it may have become a relevant factor to be considered that he had not committed such delinquency in the past. But his total service as on the date of misconduct was of six months. Apparently, the learned Judge, Labour Court was totally oblivious of the short span of the service rendered by the workman. Once it is held that the two reasons given by the Labour Court for recording a conclusion that the punishment awarded to the workman is excessive or irrelevant, it must be held that the interference by Labour Court in the quantum of punishment was unwarranted. Thus it has to be held that the Labour Court has failed to apply its mind to the relevant factors while exercising its jurisdiction u/s 11A.

10. In R.S.R.T.C. and Anr. v. Presiding Officer, Labour Court, Kota, of which reference has been made hereinabove, a similar award passed by the Labour Court was set aside by this Court. While doing so the Court made these observations:-

"It cannot be ignored that a conductor in the service of the Corporation plays an important role in collecting the revenue which ultimately constitute the part of fund on which the Corporation can carry on its business, industry and undertaking. Employee belonging to the cadre of conductors or any other cadre who is found responsible for making holes in the fabric which constitutes the foundation of the petitioner Corporation, constitutes a serious threat to the entire industry. In fact this is true of all employees who may be serving the Government, the other public employers or even the private employers. In addition to this, so far as the employees engaged in the public employment are concerned, they constitute a class which carries a more onerous responsibility on their shoulders. They are public servants and not the masters of public. They are trustees of the public at large in the institutions of public importance, corporations, companies and undertakings. These public bodies have been created, established and constituted to serve the masses, to serve the common man of the State. If by their actions, they commit breach of the trust or commit theft or misappropriation, there is absolutely no justification for showing any compassion or leniency with such employees in the matter of quantum of punishment. A public servant who is found guilty of misappropriation of public funds, corruption, dishonesty, fraud or theft, has no right whatsoever to serve the public and the public who is its real master and who is represented by the employer, has a right to see the ouster of such an employee by due process of law."

The aforesaid observation made by this Court are fortified by similar decision of Andhra Pradesh State Road Transport Corporation v. Additional Judge, Labour Court-cum-Industrial Tribunal 1986(63) WR 230 Gujarat Road State Transport Corporation v. Jamnadas Behari Bhai 1982 (2) LLN 583 and Municipal Corporation of City of Ahmedabad v. Hussain Miya Chand Miya (1987 I LLN 152).

11. The Apex Court has also in D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others, interpreted Clause 12(b) of M.P. Standard Standing Orders which is similar to Standing Order No. 34 and held that where a person was found guilty of misconduct in relation to dishonesty, the punishment of dismissal can neither be considered as harsh nor unfair. Decisions of this Court in Instrumentation Ltd., Kota v. Rajasthan Pradesh Hind Mazdoor Sabha and Anr. 1993 (1) WLC 318 and Sulej Cotton Mills Ltd. and 3 Ors. v. Rajasthan Textile Mazdoor Panchayat Bhawani Mandi and 3 Ors. 1994 I LLJ 1043 on which reliance has been placed by Shri Sharma, do not in any manner support the case of respondents. Neither of these two cases relate to an allegation of misconduct involving misappropriation of money. The workman had been charged with allegations of altogether different misconduct. In the peculiar fact situation obtaining in those cases, this Court declined to interfere with the exercise of jurisdiction by the Labour Court u/s 11A of the Act. Those cases cannot be treated as authorities for a proposition that even in cases of embezzlement or misappropriation of public money the Labour Court/Tribunal has got jurisdiction to interfere with the penalty of removal or to substitute it

with a lesser punishment.

12. In view of the above, it must be held that the impugned award passed by the Labour Court directing reinstatement of the workman, suffers from an error of law apparent on the face of the record and, therefore, the same deserves to be set aside.

13. However, at the same time it is to be noted that the domestic enquiry held by the employer was found to be unfair by the Labour Court vide its award dated March 12, 1990 and the allegation of misconduct has been proved by the employer for the first time in a proper enquiry held before the Labour Court. A look at the impugned award shows that the entire domestic enquiry was completed in one day and no opportunity of defence was given to the workman. It can thus be said that the enquiry was held in total disregard and in flagrant violation of the principles of natural justice. Since the employer has led evidence before the Labour Court and the misconduct has been held to be legally proved for the first time on December 20, 1991, the doctrine of relation back cannot be applied as has been held by this Court in S.B. Civil Writ Petition No. 4056/93, R.S.R.T.C. v. Vijay Singh decided on July 27, 1993. Therefore, the employer shall have to pay wages to the workman between August 10, 1982 to December 20, 1991.

14. For the reasons aforesaid, the writ petition is allowed. Award dated December 20, 1991 is held to be erroneous in law and is, therefore, set aside. It is, however, declared that the workman shall be entitled to wages between the date of termination of service and the date of the impugned award i.e. December 20, 1991. If any amount of wages has been paid to the workman in pursuance of the impugned award and this Court's order dated March 15, 1993 that amount shall be adjusted in the amount required to be paid to the workman upto December 20, 1991. Parties are left to bear their own costs.