
(2003) 05 AHC CK 0177
In the Allahabad High Court
Case No : C.M.W.P. No. 12746 of 1986

Regional Manager-I, S.B.I.

APPELLANT

Vs

Vidya Prakash Bajpai and Another

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Citation : (2003) 4 AWC 2663

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : S.N. Verma, Sharad Varma, Navin Sinha and Yashwant Varma, for the Appellant; Kushal Kant and R.V. Gupta and S.C., for the Respondent

Final Decision : Allowed

Judgement

D. P. Singh, J.—Heard learned counsel for the parties.

2. This writ petition is directed against an award of the Industrial Tribunal dated 12th March, 1986, by which the workman has been reinstated with full back wages.

3. Brief facts for the decision of this petition are that the respondent workman a permanent employee of the petitioner bank, while he was working as permanent messenger two instruments with railway receipts were received in the main branch, they were found missing. On enquiry, it was revealed that the delivery of the consignments (the fiscal instruments) had been taken by some one after making forged endorsement. The petitioner bank lodged two first information report on 24th July, 1976 and 19th July, 1976 and on investigation, the police arrested the workman on 6.8.1976 and, therefore, he was placed under suspension. On further investigation by the police it was revealed that delivery of consignment was taken by one Rajendra Prasad, the real brother of the workman, apparently with the connivance of the workman. However, due to want of clinching evidence, the police filed final report. The suspension of the workman was revoked on 19th June, 1979. It is stated that since the workman held a post

of confidence in that he was in custody of such instruments in transit, which confidence was wavered, therefore, on 27.9.1983, he was terminated invoking paragraph 522 (1) of the Shastri Award, after making payment of compensation as provided therein. The labour court held that since loss of confidence was based upon workman's negligence, therefore, negligence being a misconduct ought to have been proved in a domestic enquiry giving a chance to the workman to meet the charge. Thus, after lifting the veil of the order simplicitor, it was found that the order was stigmatic and also juniors having been retained, it was violative of the provisions of U. P. Industrial Disputes Act, 1947. Thus, directed reinstatement with full back wages.

4. The counsel for the petitioner has raised three submissions in support of this petition. Firstly, he urged that all ingredients of punitive action not being present, the Tribunal was wrong in holding that the order was stigmatic. Secondly, he has urged that while coming to the conclusion that the workman did not command the confidence of the management, his entire service sheet was also examined, thus, it could not be said that the order was stigmatic or enquiry was necessary, specially, in view of the powers conferred under para 522 of the Shastri Award. Thirdly, he urged that the labour court without recording any plausible reason has granted reinstatement and backwages, as a matter of course, thus, the relief granted was against the settled principles of law.

5. In support of his first contention, learned counsel for the petitioner, has placed reliance upon a decision of the Apex Court in Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, The Apex Court, after considering several cases right from the case of Parshotam Lal Dhingra Vs. Union of India (UOI), , to AIR 2000 1706 (SC) laid down conditions precedent to render a termination order as stigmatic. In paragraph 21 of the said report, it held that it has to be seen as to whether before the termination, (a) full scale formal enquiry ; (b) into allegations involving moral turpitude, misconduct which ; (c) culminated in a finding of guilt. It held that if any of the three ingredients were missing, simplicitor termination has to be upheld. However, the argument of the learned counsel for the workman is that in Verma's case the Apex Court was considering the simplicitor termination of a probationer, therefore, the ratio would not apply. A perusal of the said report would show that the Court had taken into consideration large number of decisions rendered in the case of even permanent employees. The Court was, in fact, considering the requirement of stigmatic order and thus, it would be immaterial whether the delinquent was, probationer, temporary or a regular employee. Moreover, in cases under the Act, whether the employee is temporary, casual or permanent, the conditions required for retrenchment is the same for all. Therefore, applying the tests laid down by the Apex Court, it would be apparent that all the conditions laid down therein, were not met. Thus, in my opinion, the argument of the learned counsel for the petitioner has to be accepted.

6. The controversy can be examined from a different angle also. It is not

disputed that the workman was custodian of the fiscal instrument in due course of his duties. It is also not disputed that he handled the said instrument which were encashed by his brother. Loss of confidence is not such a charge, specially in a Bank, which can be proved beyond doubt. May be, had the workman been in another department, these lapses as the Tribunal says negligence, may not amount to loss of confidence. A perusal of the written statement of the bank together with the testimony of an officer and service sheet, which was available on record, shows that his integrity was wanting. An employee of a bank has a bigger burden to carry, they are one of the best paid employees, any lapse had to be carefully examined, and on a stricter scale than for an employee in other department.

7. The Shastri Award, which by now has become synonymous to service conditions of a Bank employee has a binding force. Procedure for appointment, confirmation, promotion, disciplinary action, retrenchment, etc. has been given therein. Para 522 (1) provides for termination in cases not involving disciplinary action for misconduct". It would be useful to quote paragraph 522 (1) of the Shastri Award :

"522. We now proceed to the subject of termination of employment. We give the following direction :

(1) In cases not involving disciplinary action for misconduct and subject to class (6) below, the employment of a permanent employee may be terminated by three months notice or on payment of three months pay and allowances in lieu of notice. The services of a probationer may be terminated by one month's notice or on payment of a month's pay and allowances in lieu of notice."

8. A perusal of paragraph 522 (1) shows that the language employed suggests that its power could be utilized for discharge without taking any disciplinary action. As already discussed above, charge of loss of confidence need not necessarily involve disciplinary action. This power can be utilised even for a misconduct if no disciplinary action is thought feasible for some valid reason. The power can also be exercised in a case of loss of confidence, of course subject to availability on the record of some grounds relating to the workman. It is not denied that the requirement of paragraph 522 was wanting. Therefore, in my view, the action of the management is supported by the said paragraph.

9. A perusal of the impugned award shows that in fact the Tribunal has not at all applied its mind or has recorded reason for granting reinstatement with full backwages. The counsel for the petitioner has, in support of this contention relied upon a decision of the Supreme Court rendered in the case of Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, The Apex Court in the aforesaid case has held that reinstatement with full backwages ought not be granted as a matter of course, but reasons have to be given in support of such relief. The Tribunal did not at all consider the material before it to grant the relief of reinstatement. The testimony of the employer's witness together with the

service sheet of the workman did not entitle him for reinstatement. However, since on the first issue itself, the writ petition is bound to be allowed, therefore, this Court need not go in details with regard to grant of relief by the labour court.

10. For the foregoing reasons, the writ petition succeeds and is allowed and the impugned award of the Tribunal dated 12.3.1986 is hereby quashed. No order as to cost.