
(2016) 03 RAJ CK 0101
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4610 of 2012

Saleem

APPELLANT

Vs

Labour Court & Industrial Tribunal, Ajmer & Another

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Citation : (2016) 150 FLR 850 : (2016) 3 LLJ 12

Hon'ble Judges : Veerendr Singh Siradhana, J.

Bench : Single Bench

Advocate : Mr. Ashish Saxena, Advocate, for the Appellant; Mr. P.S. Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Veerendr Singh Siradhana, J.—Aggrieved of the termination of his employment vide order dated 18th August, 2009, on the ground of misconduct and wilful absence as a consequence of domestic inquiry proceedings; the petitioner raised an industrial dispute leading to reference by the appropriate Government vide Notification dated 13th October, 2010. The Labour Court-cum-Industrial Tribunal, Ajmer, has answered the reference in negative and against the petitioner workman, of which the petitioner is aggrieved of.

2. Briefly, the essential skeletal material facts necessary for adjudication of the controversy raised are that the petitioner was appointed to the post of Helper-cum-Machine Assistant, vide order dated 1st December, 2005, with the Shree Cement Ltd., Beawar (respondent-employer). The petitioner-workman was served with a charge-sheet for misconduct of wilful absence. It is pleaded case of the petitioner that, in fact, he was never served with the notice with reference to initiation of departmental enquiry and was not allowed an opportunity to appoint Defence Assistant to defend him. It is further contended that in fact the officials of the respondent-employer fabricated the documents.

3. Learned counsel for the petitioner-workman, Mr. Ashish Saxena, reiterating

the pleaded facts and grounds of the writ application, emphatically argued that the petitioner-workman was not allowed an opportunity of hearing. It is further asserted that the petitioner-workman never admitted the charge of wilful absence so also the enquiry report dated 3rd August, 2009 and 4th August, 2009. Having served with the order of dismissal from service dated 18th August, 2009, the petitioner- workman raised an industrial dispute challenging the action for violation of mandate of Section 25-F and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947").

4. According to the learned counsel, in the alternative, the extreme penalty of dismissal inflicted is shockingly disproportionate to the alleged misconduct. In support of his stand, he has relied upon the opinion of the Hon''ble Supreme Court in the case of Chairman-cum-Managing Director, Coal India Ltd. And Anr. v. Mukul Kumar Choudhary & Ors. : (2009) 15 SCC 620, wherein the Hon''ble Supreme Court held that where the misconduct of the delinquent was unauthorised absence from duty and fairly admitted his guilt and explained the reasons for his absence; in such circumstances, the extreme penalty of removal in like circumstances would amount to unduly harsh punishment.

5. In response to the notice of writ application, the respondent-employer has filed its counter-affidavit while supporting the impugned award made by the Tribunal upholding the action of the respondent-employer in terminating the services of the petitioner-workman for he was found habitual of absence from duty.

6. Mr. P.S. Sharma, appearing for the respondent-employer while reiterating the stand in the counter-affidavit, vehemently argued that the instant case at hand, is not a simple case of absence from duty, rather the petitioner-workman was habitual and this fact was pleaded and proved before the Tribunal as would be evident from the finding arrived at on the basis of pleadings of the parties, evidence adduced and materials on record.

7. According to learned counsel from the details and evidence brought on record, the petitioner-workman, on similar charges, was held guilty on 13 occasions earlier and this fact has been specifically taken note of by the Tribunal while making the impugned award.

8. I have heard the learned counsel for the parties and with their assistance carefully perused the materials available on record and carefully perused the impugned award as well as gave my earnest consideration to the rival submissions at Bar.

9. Indisputably, the enquiry conducted was held to be proper and fair, vide order dated 22.12.2011 by the Tribunal. The details of the charge-sheet and delinquency detailed out in the reply to the statement of claim and findings arrived at by the Tribunal on a proper analysis of the pleadings and appreciation of evidence adduced, cannot be faulted with.

10. In the case of Chairman-cum-Managing Director, Coal India Ltd. (supra;), the respondent therein (Mukul Kumar Choudhary), who joined services in 1992 as Systems Officer was transferred in 1996 to North-Eastern Coalfields, Assam. On 16.9.98, he proceeded on sanctioned leave upto 29.9.1998. However, he overstayed the sanctioned leave and did not report on duty despite reminders. On a disciplinary enquiry conducted the respondent (Mukul Kumar Choudhary) appeared before the Enquiry Officer and admitted the charges levelled against him. On conclusion of the enquiry with the finding of guilt; his services were terminated. The Hon''ble Supreme Court taking note of the fact that the delinquent admitted the charges detailing out the fact that he did not intend or desire to disobey the orders of the higher authority but it was on account of personal reasons beyond his control, he could not report for duty. On a consideration of the earlier opinions, the Hon''ble Supreme Court on the question of proportionality held that the tests to be applied while dealing with question of quantum of punishment would be; would any reasonable employer have imposed such punishment in like circumstances ? From the singular facts of the case, it is evident that it was a solitary case of absence and that too for circumstances which were beyond control of the respondent (Mukul Kumar Choudhary).

11. In the instant case at hand, the petitioner-workman was found habitual of absence from duty and at one point of time, he also tampered with medical certificate as is evident from the materials available on record and finding arrived at on that basis, which is not in dispute.

12. In the case of L and T Komatsu Ltd. v. N Udayakumar: (2008) 1 SCC 224, the Hon''ble Supreme Court observed that habitual absence means gross violation of disciplinary proceedings. Referring to the earlier opinion in the case of Burn & Co. Ltd. v. Their Workment & Ors.: (1960) 2 LLJ, 261 and taking note of the increasing evidence of habitual absenteeism in recent times reference was made to the opinion in the case of Life Insurance Corporation of India v. R. Dhandapani : (2006) 1 LLJ, 329, wherein the Hon''ble Supreme Court observed thus:

"It is not necessary to go into in detail regarding the power exercisable under Section 11A of the Act. The power under said Section 11A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words "disproportionate" or "grossly disproportionate" by itself will not be sufficient."

13. In the case of Rs. and T. Komatsu Ltd. (supra), while explaining the scope of Section 11 of the Act of 1947, referring to the earlier opinions, the Hon''ble Supreme Court observed thus:

"9. In Mahindra and Mahindra Ltd. v. N.B. Narawade : (2005) I LLJ 1129 SC it was noted as follows:

It is no doubt true that after introduction of Section 11A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/ Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11A of the Act and reduce the punishment. As noticed herein above at least in two of the cases cited before us i.e. Orissa Cement Ltd. and New Shorrock Mills this Court held: "Punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to herein above.

10. Again in M.P. Electricity Board v. Jagdish Chandra Sharma (2005) II LLJ 156 SC this Court dealt with the matter as follows:

The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question is whether the punishment imposed was so harsh or so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorised absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction under Section 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed, is shockingly disproportionate to the charge

proved. These aspects are well settled. In *U.P. SRTC v. Subhash Chandra Sharma* (2000) I LLJ 1117 SC this Court, after referring to the scope of interference with punishment under Section 11A of the Industrial Disputes Act, held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. In *Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh*, (2004) III LLJ 772 SC this Court after referring to the decision in *State of Rajasthan v. B.K. Meena* (1997) I LLJ 746 SC also pointed out the difference between the approaches to be made in a criminal proceeding and a disciplinary proceeding. This Court also pointed out that when charges proved were grave, vis-a-vis the establishment, interference with punishment of dismissal could not be justified. In *Bharat Forge Co. Ltd. v. Uttam Manohar Nakate* this Court again reiterated that the jurisdiction to interfere with the punishment should be exercised only when the punishment is shockingly disproportionate and that each case had to be decided on its facts. This Court also indicated that the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, had to act within the four corners thereof. It could not sit in appeal over the decision of the employer unless there existed a statutory provision in that behalf. The Tribunal or the Labour Court could not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. It is not necessary to multiply authorities on this question, since the matter has been dealt with in detail in a recent decision of this Court in *Mahindra and Mahindra Ltd. v. N.B. Narawade*. This Court summed up the position thus: (SCC p. 141, para 20)

20. It is no doubt true that after introduction of Section 11A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/ Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment.

It may also be noticed that in *Orissa Cement Ltd. v. Adikanda Sahu* and in *New Shorrock Mills v. Maheshbhai T. Rao* this Court held that use of abusive language against a superior, justified punishment of dismissal. This Court stated

"punishment of dismissal for using abusive language cannot be held to be disproportionate". If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in *Muriadhi Colliery BCC Ltd. v. Bihar Colliery Kamgar Union* this Court after referring to and quoting the relevant passages from *Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh* (2004) III LLJ 772 SC and *Tournamulla Estate v. Workmen* held: (SCC p. 336, para 17)

The courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11A of the Act to interfere with the punishment of dismissal."

14. Applying the principles enunciated by the Supreme Court in the cases aforesaid, the inevitable conclusion is that the Tribunal committed no error or illegality/perversity while making the impugned award so as to call for any interference by this Court in exercise of writ jurisdiction.

15. In the result, the writ application is devoid of any substance and lacks any merit, and therefore, deserves to be dismissed.

16. Ordered accordingly.

17. However, in the facts and circumstances of the case, there shall be no order as to costs.