
(2013) 09 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition No. 1012 of 2002 (M/S.) and Old No. 1780 of 1997

Sanjai Kumar Mohan Nigam

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2013) 139 FLR 754 : (2014) 1 LLJ 325 : (2014) 1 LLN 266

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Advocate : T.A. Khan and Manokam Nautiyal, for the Appellant; R.K. Raizada and Ajay Singh Bisht, for the Respondent

Final Decision : Partly Allowed

Judgement

B.S. Verma, J.—Heard Mr. T.A. Khan, learned Senior Advocate assisted by Mr. Manokam Nautiyal, learned Counsel for the petitioner and Mr. R.K. Raizada, learned Senior Advocate assisted by Mr. Ajay Singh Bisht, learned Counsel for respondent Nos. 2 and 3. By means of this writ petition, the petitioner has sought a writ in the nature of certiorari quashing the award of the Labour Court dated 15.10.1996 (Annexure-7 to the writ petition), whereby the Labour Court has held that dismissal of petitioner from services by the employer is not unjustified and illegal and he is not entitled to get any relief.

2. Brief facts of the case, giving rise to the present writ petition are, that petitioner was initially appointed as Clerk/Typist in Birla Yamaha, Dehradun in the year 1985. He was promoted to the post of Casting Assistant in the year 1987. On 20.4.1992, Sri N.K. Ghosh, Deputy Personal Manager went to the Canteen and found two workers namely Sri Ratan Lal Arora and Sri Pankaj Jain heating up their food in the canteen. Sri N.K. Ghosh stopped them from doing so as a result of which some altercation took place between the workers and Sri N.K. Ghosh. Against this incident, Manager took action against the petitioner who was Vice President of the Union at the relevant time and on the same day i.e. 20.4.1992 Sri Yogendra Singh, Manager, prepared a charge-sheet against the petitioner

stating that at the time of alleged incident the petitioner had shouted at Sri N.K. Ghosh and had also threatened him and therefore has committed misconduct under the provisions of the certified Standing Orders of the Company. The workman/petitioner refused to accept the charge-sheet dated 20.4.1992. On 22.4.1992, Sri N.K. Ghosh prepared another charge-sheet against the petitioner levelling serious charges of using abusive language by the petitioner. The petitioner/workman contends that in the subsequent charge-sheet, document used against the petitioner was not supplied to him. On 1.5.1992, the workman submitted his reply in which he alleged that the charges have been levelled against him with an ulterior motive and to remove the petitioner from service. He also submitted that the alleged altercation took place between Ratan Lal and N.K. Ghosh. Sri Ratan Lal Arora lodged the complaint with the Union with regard to misbehavior of Sri N.K. Ghosh and being Vice President of the Union the petitioner was asked to get the matter amicably settled. He submitted that he never misbehaved with Sri N.K. Ghosh during his discussion with him. The reply having not being found satisfactory, the disciplinary authority appointed Sri M.P. Singh as Enquiry Officer and departmental enquiry was initiated against him on 4.5.1992. The petitioner contends that Sri M.P. Singh is an own man of Management therefore he was wrongly appointed as Enquiry Officer. Before the Enquiry Officer, the Management filed four documents alleged to have been written by Sri Anil Soni, Surendra Garg, Yogendra Singh and Sri S.K. Sharma on 22.4.1992. It is alleged by the workman that the said letters were not supplied to the petitioner earlier and the same were supplied to the petitioner on 1.6.1992 before the Enquiry Officer. All the aforesaid four persons were produced before the Enquiry Officer for cross-examination. After completing the enquiry, the Enquiry Officer, vide his report dated 30.6.1992, held the petitioner guilty of the charges levelled against him. The disciplinary authority, vide its order dated 6.7.1992, accepted the enquiry report and accordingly terminated the petitioner. Feeling aggrieved, the workman/petitioner initiated conciliation proceedings. Thereafter, vide Notification dated 25.6.1993, State referred the matter to the Labour Court, to the effect "Whether removal of workman Sri Sanjay Kumar from services by employer on 6.7.1992 is illegal? If so, to what relief the workman is entitled for?"

3. The contention was raised before the Labour Court that respondent employer never supplied enquiry report to the workman and therefore the entire enquiry is against the principles of natural justice.

4. By order of the Labour Court, the enquiry report was supplied to the workman on 15.2.1996.

5. After hearing the parties and considering the evidence led by the parties, learned Labour Court, vide its award dated 15.10.1996, confirmed the penalty imposed upon the petitioner by respondent No. 2. Further aggrieved, the workman has filed the present writ petition before this Court.

6. Counter affidavit has been filed by the respondents denying the averments

made in the writ petition. The petitioner has also filed rejoinder affidavit in which the averments made in the writ petition are reiterated.

7. Sri T.A. Khan, learned senior Counsel appearing for the workman/petitioner has contended that the said incident had taken place in the canteen between Sri N.K. Ghosh and Sri Ratan Lal. The workman was not at all involved in the incident. Being Vice President of the Union, he was asked to intervene in the matter. It was contended that no action was taken against those two persons between whom the said altercation had taken place, and the petitioner has been made scape-goat for no fault of his own.

8. Learned Senior Counsel has further contended that the action of the respondent was violative of the principles of natural justice. He had not been furnished with the copy of the enquiry report anytime prior to his removal by the punishing authority. According to the petitioner, the enquiry report was served upon the petitioner for the very first before the Tribunal.

9. Learned Senior Counsel has further contended that the punishment imposed upon the petitioner did not commensurate with the alleged misconduct.

In support of his arguments, learned Senior Counsel relied upon the following judgments:--

- (i) Rama Kant Misra Vs. The State of Uttar Pradesh and Others,
- (ii) Ram Chander Vs. Union of India (UOI) and Others,
- (iii) Union of India and others Vs. Mohd. Ramzan Khan,
- (iv) State of Uttar Pradesh and Others Vs. Ram Daras Yadav,
- (v) Inderjit v. Punjab and Haryan High Court and another. (2010) 12 SCC 530
- (vi) Punjab National Bank and Others Vs. K.K. Verma,

10. In Rama Kant Misra Vs. The State of Uttar Pradesh and Others, it has been held by the Hon"ble Apex Court that Abusive language may show lack of culture but merely the use of such language on one occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service.

In Ram Chander Vs. Union of India (UOI) and Others, it has been held that the adjudicating authority should give a reasoned decision after giving opportunity of hearing and a chance to satisfy the authority as to the final orders to the delinquent so as to promote public confidence in the administrative process.

In Union of India and others Vs. Mohd. Ramzan Khan, it has been held that the amendment in Article 311(2) has nothing to do with providing of copy of report to delinquent in matter of making his representation and the supply of copy of inquiry report along with recommendation if any, in matter of proposed punishment to be inflicted would be within rules of natural justice and the

delinquent would therefore be entitled to supply of a copy thereof.

In *State of Uttar Pradesh and others v. Ram Daras Yadav*, 2010 (124) FLR 123 (SC) it has been held that when the happening or non-happening of the alleged incident resulting into the dismissal of the delinquent is itself in doubt the punishment of dismissal is clearly disproportionate.

In *Inderjit v. Punjab and Haryana High Court and another*, (2010) 12 SCC 530 the question involved was as to the proportionality of the punishment of dismissal of the delinquent (Chowkidar) for being absent from his duty when two Judges of the Civil Court raided the premises and it was held that the punishment of dismissal of the appellant was disproportionate and the same was reduced to stoppage of three increments with cumulative effect.

Further in *Punjab National Bank and Others Vs. K.K. Verma*, wherein the question involved was whether the respondent were entitled either in law or as per the rules governing his service conditions to a copy of the inquiry report before issuance of the order of punishment it was held by the Hon"ble Apex Court that service regulations are to be followed in letter and spirit while removal of an employee from his service and where the service rules themselves made it obligatory, it is mandatory to furnish a copy of the inquiry report to the employee.

11. In reply thereto, learned Senior Counsel appearing for the employer respondent has contended that non-supply of enquiry report is inconsequential if the employee does not show as to how he is prejudiced thereby. In support, learned Counsel relied upon a judgment of Hon"ble Apex Court in the case of *Managing Director, E.C.I.L., Hyderabad Vs. B. Karunakar (II)*, wherein the Supreme Court has also considered the case of *Mohd. Ramzan* (supra).

12. Further, learned senior Counsel on the issue of adequacy of punishment has referred following judgments

(i) *New Shorrock Mills Vs. Maheshbhai T. Rao*,

(ii) *Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc.*,

In *New Shorrock Mills's* case, Hon"ble Apex Court has held in para-9 as follows:--

9. It appears to us that the Labour Court completely misdirected itself in ordering the respondent's reinstatement with forty per cent back wages. The Labour Court was exercising jurisdiction u/s 78 of the Bombay Industrial Relations Act, 1946. It had the jurisdiction, inter alia, to decide the disputes regarding the propriety and legality of an order passed by an employer acting or purporting to act under the Standing Orders. The Labour Court, in the present case, having come to the conclusion that the finding of the departmental enquiry was legal and proper the respondent's order of discharge was not by way of victimization and that the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the Court could come to

the conclusion that the punishment which was awarded was shockingly disproportionate to the employee's conduct and his past record. The Labour Court completely overlooked the fact that even prior to the incident in question the respondent had misconducted himself on several occasions and had been punished. According to the appellant there were at least three other instances where the respondent had misconducted himself and that he had failed to improve his conduct despite his assurances from time to time. Another aspect which was overlooked by the Labour Court was that on the finding of the Inquiry Officer that the respondent had misbehaved with his superior officer and was guilty of misconduct, the appellant could have dismissed the respondent from service. The appellant chose not to do so. Instead it passed an order of discharging the respondent from service. Lesser punishment having been given by the management itself there was, in our opinion, not justifiable reason for Labour Court to have set aside the punishment so awarded. We are unable to accept that the punishment imposed by the management was in any way disproportionate to warrant interference by the Labour Court. The direction of the Labour Court ordering reinstatement of the respondent with forty per cent back wages was clearly unwarranted.

In Mahindra and Mahindra, Hon"ble Apex Court has held in para-20 as follows:--

20. It is no doubt true that after introduction of section 11-A 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 hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised u/s 11-A 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 u/s 11-A of the Act and reduce the punishment. As noticed hereinabove 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 hereinabove.

13. It has been further contended by the learned Senior Counsel that on 12.6.1992 an application was moved by the workman to the effect that the matter be settled amicably and that he regrets for the incident meaning thereby that the workman had admitted his guilt.

14. Learned Senior Counsel has further contended that 21 years have elapsed from the date of incident and 6 years on account of the dismissal of the writ petition in default, therefore, reinstatement would not be proper at this belated stage.

15. Learned Senior Counsel for the respondent in the alternative has submitted that if the Court comes to the conclusion that the punishment imposed upon the petitioner is excessive, then in the interest of justice, only compensation may be awarded excluding the back wages in view of Apex Court's judgment in the case of J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another,

16. I have heard learned Counsel for the parties and perused the material available on record.

17. In so far as the charges levelled against the petitioner are concerned, the Court is of the opinion that the charges, so proved, are based on findings of fact, which cannot be interfered in a writ jurisdiction. The contention of the learned Senior Counsel that enquiry report was not furnished to the petitioner anytime prior to his removal is not tenable in view of Apex Court's judgment in the case of Managing Director, E.C.I.L., Hyderabad Vs. B. Karunakar (II),

18. The second limb of argument to the effect that the punishment does not commensurate to the misconduct requires consideration.

19. It appears that the allegation of misconduct against the petitioner is of misbehavior with Sri N.K. Ghosh, Deputy Personal Manager on 20.4.1992. Now, this Court has to see whether the punishment imposed upon the petitioner commensurates with the misconduct.

20. Catena of judgment of Hon'ble Supreme Court says that ordinarily, Court should not interfere with the decision taken by the appointing authority with regard to punishment. However, in case the punishment does not commensurate with the misconduct and it shocks the conscience of Court, then it may interfere with the order of punishment. In the present case, the solitary allegation against the petitioner is with regard to the incident occurred on 24.2.1990 when the petitioner misbehaved with Sri N.K. Ghosh. The attention has not been invited to any other material on record which may reveal chequered history of the petitioner, either before the said incident or thereafter. Attention has also not been invited of this Court to any material which may reveal that the petitioner possessed bad antecedents. In absence of any material tarnishing the petitioner's image or believing that he possessed a bad service record for one incident with regard to misbehavior, the dismissal from service seems to be excessive and does not commensurate with the allegation of misconduct The

Tribunal has not considered this aspect of the matter. In view of the above, I am of the view that the Tribunal should apply its mind towards lesser punishment afresh, other than removal of service, which has been imposed by the impugned award dated 15.10.1996.

21. Accordingly, I allow the writ petition in part and set aside the impugned award dated 15.10.1996 passed by the Labour Court Dehradun. The matter is remanded to the Labour Court Dehradun to pass a fresh order with regard to lesser punishment other than removal of service keeping sympathetic view towards the petitioner and also in view of observations made hereinabove. Let fresh order be passed by the Labour Court with regard to punishment expeditiously. Till the fresh decision is taken, the punishment order passed by punishing authority shall be kept in abeyance. Let the Lower Court record be sent back to the Tribunal concerned.