

(1999) 03 SC CK 0021

In the Supreme Court Of India

Case No : Civil Appeal No. 1360 Of 1999

Senapathy Whitely Ltd.

APPELLANT

Vs

Karadi Gowda and Another

RESPONDENT

Date of Decision : 10-03-1999

Acts Referred:

Constitution of India, 1950 — Article 136
Industrial Disputes Act, 1947 — Section 11A

Citation : (2000) 85 FLR 414 : (2000) 1 LLJ 273 : (1999) 9 SCC 259 : (1999) SCC(L&S) 1224

Hon'ble Judges : M. Jagannadha Rao, J;A. P. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.

2. This is an appeal preferred by the Management of Senapathy Whitely Ltd. against the judgment of the Division Bench of the High Court of Karnataka in Writ Appeal No.3959 of 1997 dated September 29, 1997 confirming the judgment of the learned Single Judge in Writ Petition No. 21766 of 1990 dated June 17, 1997. The learned Single Judge by his judgment refused to interfere with the award of the Labour Court dated June 22, 1990 in Reference No. 59 of 1986 passed by the Presiding Officer, Additional Labour Court, Bangalore.

3. The brief facts of the case are as follows: the respondent workman was appointed by the appellant as Technician on June 1, 1983. On a charge of unauthorised absence without leave, the Management conducted a domestic enquiry in which the workman did not participate and remained ex parte. Consequently, the Management passed an order of dismissal on May 22, 1985. The Labour Court finally passed its award on June 22, 1990 and while holding that there was unauthorised absence on the part of the workman, the Labour Court considered that punishment of dismissal was disproportionate to the misconduct involved and therefore thought it fit to direct reinstatement with

continuity but without back wages but that three increments should be cut. This award was not interfered with in the writ petition filed by the Management and also in the writ appeal.

4. Learned Senior Counsel for the appellant, Shri Anil Divan contended before us that the workman was a probationer when he unauthorisedly absented himself from January 1, 1985 for a period of 52 days and the Management had no other option but to conduct a domestic enquiry. In the said enquiry the workman did not appear and hence paper publication was issued and he was set ex parte. Ultimately he was dismissed from service. According to the learned Senior Counsel once the Labour Court came to the conclusion that there was no infirmity in the enquiry and that the misconduct was held proved, it could not have directed reinstatement of the workman with continuity though without back wages. He referred to some facts which show that subsequent to the dismissal order, there were some incidents which created a situation in which the employer felt that it could not take the employee into service.

5. Learned Senior Counsel appearing for the workman Shri Ganesh contended that there is no finding recorded by the Labour Court that the workman was a probationer. The Labour Court by virtue of the powers conferred upon it u/s 11A of the Industrial Disputes Act, 1947 could convert an order of dismissal passed by the employer into one of reinstatement and award any other lesser punishment. Learned Senior Counsel contended that when the Labour Court had applied its mind to the proportionality of the punishment and the High Court had refused to interfere with the reduced punishment that was awarded to the workman, this Court should not interfere in the matter.

6. The claim petition filed by the workman before the Additional Labour Officer, Bangalore reveals that the workman was a probationer at the time when he absented himself from duty. The workman in his claim statement merely stated that the contention of the Management in this behalf was illegal and unjustified but he did not dispute the fact that he was a probationer at the time of his absence. In view of the above pleadings, between the parties before the Labour Court, we are of the view that the appellant's contention before us that the workman was a probationer at the relevant time is correct and that was more or less no dispute on this aspect before the Labour Court.

7. Learned Senior Counsel for the respondent is no doubt right in contending that the powers of the Labour Court u/s 11A of the Industrial Disputes Act, 1947 are wide enough to convert an order of dismissal into one of lesser punishment as done in this case. The Labour Court had directed reinstatement and continuity without back wages and directed withholding of three increments. But some of the reasons given by the Labour Court to which we do not propose to refer in detail do not appear to us to be correct. So far as the plea of the workman that he was sick and, therefore, he could not attend to his duties was concerned, this plea was raised before the Labour Court for the first time. Unfortunately the workman did not produce documentary or contemporaneous evidence that he

was sick during the relevant period. It appears to us that the Labour Court took into consideration certain non-existent factOrs.

8. The Management has come forward with a suggestion that in the peculiar circumstances of this case order of the Labour Court for reinstatement may be set aside and, that the Management is prepared to pay back wages due to him from 1990 onwards after deducting a sum of Rs. 63,000 which was paid pursuant to the interim orders. This sum comes to about Rs. 2.25 lakhs.

9. It is well settled that the powers of the Labour Court u/s 11A are wide and that it would be open to the High Court in justifiable cases to modify the order of the Labour Court. It is also permissible for this Court under Article 136 of the Constitution in appropriate cases to alter the punishment imposed on the workman for doing justice between the parties. In view of the facts stated above and the subsequent developments which have taken place after the order of dismissal, we are inclined to modify the order passed by the Labour Court. At the same time we would safeguard the interests of the workman by treating him as probationer and converting the order of dismissal into one of discharge subject to, however, payment of amount what has been pottered by the Management. This we are doing in order to remove any stigma that may attach to the respondent if the order of dismissal is to be maintained. An order of discharge does not contain any such stigma.

10. In the circumstances of the case we set aside the judgment of the Division Bench of the High Court as well as the judgment of the learned Single Judge and modify the order of the Labour Court as follows:

The order of dismissal dated May 22, 1985 is set aside and is converted into an order of discharge simpliciter treating the workman as a probationer subject, however, to the payment of a sum of Rs. 2.50 lakhs to the workman. The said amount will be paid to the workman within two months from today.

11. The appeal is disposed of accordingly.