
(2005) 11 KL CK 0006
In the High Court Of Kerala
Case No : W.A. No. 991 of 2005

South Indian Bank Ltd.

APPELLANT

Vs

V.G. Krishnakumar and Another

RESPONDENT

Date of Decision : 16-11-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 30(1)
Industrial Disputes Act, 1947 — Section 11A

Citation : (2006) 2 LLJ 661

Hon'ble Judges : S. Siri Jagan, J;Rajeev Gupta, J

Bench : Division Bench

Advocate : B.S. Krishnan, K. Anand and Latha Krishnan, for the Appellant; P. Ramakrishnan, for the Respondent

Final Decision : Allowed

Judgement

S. Siri Jagan, J.—The management in an Industrial dispute is the appellant before us. They are aggrieved by the judgment of the learned single Judge in O.P. No. 17996/1997 by which the learned single Judge declined to interfere with Exhibit P-19 award of the Central Government Labour Court, Ernakulam, by which the Labour Court interfered with the punishment of dismissal from service imposed by the management on the 1st respondent workman for proved misconduct and directing reinstatement without back wages imposing on him the punishment of suspension for a period of one year from the date of the order of dismissal.

2. The appellant-management is a Scheduled Bank. The 1st respondent-workman was a clerk in the bank. Disciplinary proceedings were initiated against him on six charges of misconduct. Having him found guilty in respect of four charges, in a domestic enquiry conducted into the charges of misconduct, the management imposed on the 1st respondent the punishment of dismissal from service. The 1st respondent-workman raised an industrial dispute, which was referred for adjudication to the Central Government Labour Court, Ernakulam

which was adjudicated as I.D. No. 33/1995. By Exhibit P-19 award, the Labour Court found that the enquiry was valid and proper and charge Nos. 2 to 4 have been proved. However, the Labour Court interfered with the punishment and instead of dismissal from service the punishment of suspension for a period of one year from the date of order of dismissal was imposed, but without back wages for the period during which he was kept out of service. Accordingly, the management was directed to take him back in service with effect from February 1, 1997. The appellant management challenged the award in the above original petition. By the impugned judgment the learned single Judge refused to interfere with the award holding that the fact that in the opinion of this Court a more stringent punishment could have been imposed is not a ground to interfere with the punishment imposed by the competent authority. The said judgment is under challenge in this writ appeal.

3. We have heard learned Counsel for the appellant as well as that of the 1st respondent workman in detail. The question to be considered in this case is as to whether the Labour Court was justified in interfering with the punishment of dismissal from service imposed by the management in exercise of the powers conferred on it u/s 11-A of the Industrial Disputes Act. ("I.D. Act")

4. There is no dearth of precedents on the scope of jurisdiction of the Labour Court while exercising jurisdiction u/s 11-A of the I.D. Act. We shall refer to one of the comparatively older decisions and two very recent decisions of the Hon'ble Supreme Court in this regard. In the decision of *Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others*, the Supreme Court was dealing mainly with the question as to whether the provisions of the Act would apply to minority educational institutions, which are protected under Article 30(1) of the Constitution. However in that case the Supreme Court also dealt with the scope of judicial review u/s 11-A of the I.D. Act by the Industrial Tribunal and the Labour Court in cases of discharge or dismissal of workmen. In the same, as a principle of law the Supreme Court in paragraph 14 of the judgment held as follows at p. 274 of LLJ:

14...As we have already said earlier the decision of the Industrial Tribunal or the Labour Court is open to judicial review by the High Court and by this Court on appeal. Section 11-A which has been introduced since then into the Act which confers the power on the Industrial Tribunal or the Labour Court to substitute a lesser punishment in lieu of the order of discharge or dismissal passed by the management again cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power u/s 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management u/s 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workmen concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision. The decision of the Industrial Tribunal or of the Labour Courts is again, as already said, subject

to judicial review by the High Court and this Court.

Again in the decision of Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., , the Supreme Court in paragraph 20 held as follows at pp. 1133 & 1134 of LLJ:

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 had 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 atleast in two of the cases cited before us i.e. Orissa Cement Ltd. v. Adikanda Sahu 1960 I LLJ 518 (supra) and New Shorrock Mills Vs. Maheshbhai T. Rao, , 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 civilized 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.

The Supreme Court has occasion to consider that very same question again in the decision of Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma, in which in paragraph 8, the Apex Court while dealing with the powers of the Labour Court u/s 107-A of the Madhya Pradesh Industrial Relations Act, 1960, which corresponds to Section 11-A of the Industrial Disputes Act laid down as follows at p. 159 of LLJ:

8...The jurisdiction u/s 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. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, this Court, after referring to the scope of interference with punishment u/s 11-A 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 *Management of Krishnakali Tea Estate Vs. Akhil Bharatiya Chah Mazdoor Sangh and Another*, this Court after referring to the decision in *State of Rajasthan Vs. B.K. Meena and others*, , 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. Vs. 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 decision of this Court in *Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc.*, . This Court summed up the position thus at pp. 1133 & 1134:

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 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* 1960 I LLJ 518 and in *New Shorrock Mills Vs. 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....

As such the jurisdictional limits of the Labour Court as also that of the High Court

in exercise of jurisdiction conferred on them u/s 11-A of the I.D. Act and Article 226 of the Constitution of India have been well defined by the principles laid down by the Supreme Court. What is left for us is only to apply the principles to the facts of the present case.

5. Although there were six charges, the enquiry officer found the 1st respondent-workman guilty of charge Nos. 2, 3, 4 and 6, out of which the Labour Court found that only charges 2, 3 and 4 have been proved. In the circumstances, we will confine ourselves to the charges which were found to be proved by the Labour Court. However, we shall herein below extract all the six charges, since to understand the charges 2 to 4 fully, it is necessary to advert to the other charges also.

1. that on August 31, 1992 at about 11.30 a.m. he refused in the first instance, to accept the cheques tendered by Mr. M. Ashokan, an employee of P.P. Abdulla and Bros., for discounting and crediting the proceeds to their DD account.

2. that after accepting the cheques he abused Mr. M. Ashokan using the words, "Vernacular text omitted. "

3. that when Mr. Ashokan refused to sit as directed by him, he threatened Mr. Ashokan with tearing off the entire cheques.

4. that when he was advised by the Branch Manager to enter the cheques in the DC Register, he posed a threatening posture to the Branch Manager and shouted at her using the words "Vernacular text omitted. "

5. that after entering the cheques in the DC Register he continued in hot temper and shouted at other members of staff in abusive language.

6. that he used to shout at the customers and the Branch Manager and create noisy scenes at the branch.

The Malayalam portion in charge No. 2 could be translated into English as "you go and sit there" and in charge No. 4 as "Then you come and do it."

6. The findings of the Labour Court on the charges is contained in paragraph 8 of the award the relevant portion of which reads thus:

8...The charges 2 to 4 extracted above are proved by the testimony of MWs 1 to 6. MW-1 is the Branch Manager. MW-2 is the Accountant. MW-3 is Deftary. MW-4 is a peon. MW-5 a Typist-cum-clerk. MW-6 is another lady clerk. All of them have given evidence in respect of this charge. The staff members filed a complaint which is marked as Exhibit M-1 in the enquiry file. This is by the co-employees including the branch manager. It is addressed to the Chairman of the management bank. The unbecoming conduct committed by the delinquent on various occasions and of his untruly behaviour in the office towards customers and fellow employees are highlighted in that complaint. Thereupon a preliminary enquiry was held and that preliminary enquiry report is marked as Exhibit M-2 in enquiry file. In Exhibit M-2 it is concluded as follows:

The lenient view taken by H.O. on various previous occasions and the casual warnings administered by staff Dept. has definitely emboldened him to continue in his own style without any improvement. He has already worked in three different branches under five different managers. All of them have made complaints about his behaviour and working.

The evidence of the management witnesses has clearly proved the above charges. I see no reason to take different view from that of the enquiry officer....

After entering the findings on the misconduct proved against the 1st respondent workman thus, the Labour Court considered the question of punishment and in para 9 of the award held as follows:

9. The next comes the question of punishment. A reading of the enquiry file as a whole, the complaint made by the fellow staff members and the preliminary enquiry report etc. will show that a person like the delinquent cannot be retained in service. The bank has dealt with several customers who have to repose confidence in the staff members. If an employee of the bank behaves in a disorderly and shouting manner towards a customer that will affect not only the functioning of the bank but also the future growth of the bank and its business. It is also to be noticed that the service record of the erring workman is plagued with warnings given occasionally. From this it follows that the workman has no unblemished service. The workman has been working in the bank for sufficient period. The bank had already shown managerial sympathy. But there is no judicial sympathy in his favour. Instead of throwing him out to the street without a penny, it will suffice if he is suspended for a period of one year from the date of order of dismissal and deprived him full back wages during the period he was out of service. The punishment of dismissal in a case like the present one is unjustifiable from the workman's stand point of view. It is to be noted that Section 11-A of the I.D. Act is intended to clothe the Labour Court or Tribunal dealing with a case of dismissal, discharge or termination of service to show leniency when circumstances so require. That part of the law relating to disciplinary action against industrial employees is expected to strike a balance between the two competing views, namely one to protect the nation from the calamity of indisciplined labour and second to protect the workers from unjust treatment. To err is human but forgive is divine. Perhaps one more chance will improve his conduct in future. Therefore, I hold that the domestic enquiry is valid, legal and proper to the extent of charges 2 to 4 are concerned and that the punishment of dismissal is unjustifiable. Therefore, the order of dismissal is set aside and it is converted into one year's suspension and deprivation of full back wages. Points so found.

7. It is on the basis of these findings that the Labour Court interfered with the punishment and converted the punishment of dismissal from service into one of suspension for a period of one year without any back wages. From a reading of the findings of the Labour Court it is abundantly clear that the Labour Court took the decision on the basis of considerations of sympathy and not on the basis that

the punishment of dismissal imposed on the workman was disproportionate to the gravity of the misconduct committed by him or that there are mitigating circumstances warranting a lesser punishment. On the contrary the Labour Court also was of the opinion that a person like the workman cannot be retained in service, notwithstanding which the Labour Court went on to reduce the punishment.

8. The learned Counsel for the 1st respondent-workman would submit that the misconduct alleged against the workman was not grave enough to warrant the punishment of dismissal. He tried to convince us that the words used by the workman against both the customer as well as the Branch Manager, particularly the word in Malayalam used for addressing both of them, namely, "Nee" (translated into English as "you") is only a local slang, which is not considered offensive in that part of the country. We are not at all convinced by that argument. Although, translated into English it may not sound that offensive, the word used by the workman to address both of them as "nee" (Malayalam) is offensive enough not only in Trichur where the incident occurred, but also in any part of Kerala and connotes a disrespectful way of addressing especially against superiors. We are also of opinion that whether it is in Trichur or in any other part of Kerala, no disciplined staff of a bank would and should address his branch manager by using the word "nee". The misconduct of the workman is compounded by the context and the facts that the Branch Manager was a lady and the incident was in the presence of other staff as well. The Supreme Court has in the decisions quoted above has categorically held that the punishment of dismissal for using abusive language cannot be held to be disproportionate.

9. In this connection, we also note that the past conduct of the workman leaves much to be desired as is evident from the observations of the Labour Court itself while entering findings on the charges, which the Labour Court has categorically found to have been proved, The said findings have not been challenged by the workman. The management has, along with the original petition, produced the documents regarding the past conduct of the workman which formed part of the enquiry file as Exhibits P-1 to P-17 which make interesting reading with regard to the character of the workman and his disposition towards his superior officers. Although some of them are in respect of minor misconducts, the same show that insubordination is his forte. Exhibit P-9 is worthy of notice in this regard. That was a memo issued to the workman alleging that in respect of journey to Calicut on November 2, 1989 the workman had mentioned the mode of journey from the Branch to Calicut as "by plane" in the cash-in- transit register. It also states that in the SB Account ledger folio in the name of Sir K. Gopalakrishnan, DSD Canvasser of the branch, the workman noted the address as "DSD Culprit". By Exhibit P-10 the workman had admitted the guilt and apologised for his misconduct and by Exhibit P-11, he was let of with a warning. Exhibit P-12 memo was issued to the workman for threatening the Accountant Shri M. Narayanan using filthy language. By Exhibit P-13, the workman had partly accepted the charge and apologised for his conduct for which also a lenient punishment of

warning was issued by Exhibit P-14. The workman has not challenged the above punishments. Exhibit P-15 is the complaint filed by five employees of the Bank including the Branch Manager which was considered by the Labour Court while dealing with the charges in paragraph quoted by us hereinbefore.

10. Of course, the learned Counsel for the workman would contend that neither in the charge sheet nor in the show cause notice for imposing punishment, these earlier conduct of the workman was mentioned and as such he had no occasion to show cause against taking into account the same while deciding punishment to be imposed on him. He would also state that no enquiry succeeded the memos and therefore the same cannot be relied on for deciding the quantum of punishment for the present misconduct. But we find that all these documents form part of the enquiry file produced before the Labour Court and in fact in the enquiry, five employees of the bank including the Branch Manager have deposed before the enquiry officer about the past conduct of the workman as well. The workman also had an opportunity to cross-examine them in respect of those documents as well, as is clear from Exhibit P-8 enquiry report. In any event, these documents being part of the records of the Labour Court, certainly those documents were evidence which could be considered by the Labour Court while dealing with the question of punishment. Moreover, in some cases punishment of warning was imposed on his admission of guilt and the workman did not find it necessary to challenge the punishment. As such, the arguments of the learned Counsel for the 1st respondent in this regard do not impress us at all.

11. In support of the impugned judgment, the learned Counsel for the workman would cite before us the decision of Management of Hindustan Machine Tools Ltd., Bangalore Vs. Mohd. Usman and Another, , wherein the Supreme Court has held that it is not for the Court, in the absence of any important legal principle, to undertake to re-examine the question of adequacy or inadequacy of material for interference by Labour Court. The decision being very short, we extract the whole of the same below at p. 386 of LLJ:

In this appeal the only question raised is whether the Labour Court was justified in 1 reducing the punishment awarded by the management for the misconduct committed by the first respondent. The management had imposed the punishment of termination of service of me first respondent. The Labour Court in exercise of the power conferred upon it by Section 11-A of the Industrial Disputes Act reduced the punishment by setting aside the punishment of termination of service and in its place imposed the punishment of stoppage of the increments for two years. Section 11-A confers power on the Labour Court to evaluate the severity of misconduct and to assess whether punishment imposed by the employer is commensurate with the gravity of misconduct. This power is specifically conferred on the Labour Court u/s 11-A. If the Labour Court after evaluating the gravity of misconduct held that punishment of termination of service is disproportionately heavy in relation to misconduct and exercise its discretion, this Court in the absence of any important legal principle would not

undertake to re-examine the question of adequacy or inadequacy of material of interference by Labour Court. We are, therefore, disinclined to interfere with the order passed by the Labour Court. Accordingly, the appeal fails and is dismissed with costs quantified at Rs. 2500.

12. Here also we note that what the Supreme Court has held is that if the Labour Court after evaluating the gravity of the misconduct holds that the punishment of termination of service is disproportionately heavy in relation to the misconduct and exercised its discretion, the Court cannot look into the question as to the adequacy or inadequacy of material for interference by Labour Court. Therefore, this Court can certainly look into the question as to whether the Labour Court has evaluated the gravity of the misconduct and come to the conclusion that the punishment of dismissal imposed by the management is disproportionately heavy in relation to the misconduct, which only we propose to do.

13. In this case, as is abundantly clear from the observations of the Labour Court itself, the Labour Court was also convinced that a person like the delinquent cannot be retained in service. The Labour Court has also categorically found that the past conduct of the workman was also reprehensible and in fact in all the branches he worked there were serious complaints about the workman. From a reading of the award itself, it is clear that the Labour Court was in fact not at all convinced about the disproportionality of the punishment imposed on the workman, but was moved by considerations of sympathy alone and nothing else. As the Supreme Court has held in the decisions quoted above, the jurisdiction of the Labour Court u/s 11-A of the Act is not a jurisdiction of sympathy. Only if the Labour Court finds a punishment imposed on the workman is disproportionate to the gravity of the misconduct committed by him, the Labour Court can interfere with the punishment u/s 11-A of the I.D. Act. The Supreme Court has repeatedly said so. We say so again. As such in the present case the Labour Court was not at all justified in interfering with the punishment imposed by the management purely on considerations of sympathy. Further we are of the opinion that the sympathy shown by the Labour Court on the workman was clearly misplaced and undeserving in view of his past conduct as well, apart from the gravity of the misconducts which were the subject matter of the industrial dispute. In this connection, we would also quote here a sentence in the impugned judgment of the learned single Judge which runs as follows:

5...Of course, if this Court was imposing the punishment as the original authority, a more stringent punishment might have been imposed....

From the above, we perceive that the Labour Court and the learned single Judge also were of the opinion that the punishment imposed on the 1st respondent workman was not at all disproportionate to the gravity of the misconduct committed by him. Discipline among staff in a Bank is of paramount importance to the continued well being of the Bank. Behaviour of the staff towards the customers vitally affects the business of the Bank which is in an increasingly competitive field. The very reputation of the Bank would badly suffer if such

insolent behaviour of staff towards the customers and the superior officers is not strictly dealt with, and made an example of for other staff as well. In this case the workman's past conduct also shows that in spite of being given several opportunities to mend his ways, he remained recalcitrant and indulged in similar misconducts time and again. He deserves no leniency whatsoever in the matter of punishment for such grave misconducts adversely affecting the very functioning of the Bank. In the above circumstances, we are satisfied that the interference by the Labour Court u/s 11-A of the I.D. Act on the punishment imposed on the 1st respondent-workman by the management without any finding to the effect that the punishment is disproportionate to the gravity of the misconduct was clearly in excess of jurisdiction and totally uncalled for. The learned single Judge went wrong in affirming the said award even after finding that the punishment imposed by the management was not disproportionate to the gravity of misconduct going by the Supreme Court decisions on the subject which were binding. Therefore, we set aside the judgment of the learned single Judge and quash Exhibit P19 award of the Labour Court in I.D. No 33 of 1995 to the extent it interferes with the punishment of dismissal imposed by the management on the 1st respondent-workman, in exercise of the powers u/s 11-A of the I.D. Act. Accordingly, we hold that the 1st respondent- workman is not entitled to any reliefs in the said industrial dispute.

14. The writ appeal is allowed as above, but without any order as to costs.