
(2017) 03 GAU CK 0018
In the Gauhati High Court
Case No : W.A. No. 66 of 2017

Sri Muchi Rai

APPELLANT

Vs

Assam Roofing Ltd.

RESPONDENT

Date of Decision : 20-03-2017

Acts Referred:

Citation : (2017) 2 LLJ 399

Hon'ble Judges : Mr. Ajit Singh, CJ. and Mr. Manojit Bhuyan, J.

Bench : Division Bench

Advocate : Mr. A. Dasgupta, Mr. B. Das and Mr. R. Sarkar, learned counsel, for the Appellant; Mr. S.C. Keyal, learned Assistant Solicitor General of India appearing, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Ajit Singh, C.J.—Heard on admission.

2. This intra-court appeal is directed against the order dated 2.11.2015 passed by the learned Single Judge of this High Court whereby he has allowed respondent's WP(C) 5021/2007.

3. The appellant was engaged in the night shift duty in the Factory of Respondent. The duty of appellant was in the manufacturing process of PVC pipes which is a specialised job. The appellant was found fast asleep during his night shift duty. He was therefore issued a charge sheet to which his reply was that he had been photographed by the Chowkidar with his eyes closed but actually he was not sleeping. The appellant also requested for forgiveness with the assurance that such mistake will not be repeated again. Dissatisfied with the reply, the respondent decided to conduct a domestic enquiry. During the enquiry, the appellant admitted to have fallen asleep during the duty hours and declined to adduce any evidence. The respondent on the other hand examined Shri KK Singh, Chowkidar to prove the charges against the appellant. The Enquiry Officer recorded a finding of guilt against the appellant where after show-cause notice

was issued to him proposing the punishment of dismissal from service. The respondent ultimately vide order dated 5.7.1999 dismissed the appellant from service.

4. Aggrieved, the appellant raised a dispute which was referred to the Labour Court for adjudication. Before the Labour Court also photographs Exhibits 5 & 6 confirmed that appellant was sleeping during night shift duty. The Labour Court therefore held that charge of misconduct against the appellant was dully established. The Labour Court however relying upon the decision of Supreme Court in Colour-Chem Limited v. A. L. Alaspurkar (1998) 3 SCC 192 held that punishment of dismissal was disproportionate and directed for reinstatement of appellant with 30% back wages and continuity of services.

5. Aggrieved, the respondent challenged the Award of Labour Court in WP(C) No.5021/2007 which the learned Single Judge has allowed by the impugned order. The learned Single Judge has taken note of the fact that earlier on two occasions also the appellant was punished for similar negligence of duty and was leniently punished with strict warning. The learned Singly Judge even took note of Respondent's letter dated 9.1.1999 which states that appellant was kept under observation for 3 months and during this period also he was found to have committed the same lapse. The learned Single Judge therefore held that appellant was an incorrigible employee and relying upon a later decision of the Supreme Court rendered in Bharat Forge Company Limited v. Uttam Manohar Nakate, (2005) 2 SCC 489 ruled that punishment of dismissal was just and proper.

6. After hearing the learned counsel for the appellant, we find ourselves in complete agreement with the view taken by the learned Single Judge. In an identical fact situation of the case, the Supreme Court in Bharat Forge Company Limited (supra) has held that dismissal of workman was fully justified. The Supreme Court even held that its earlier decision in Colour-Chem Limited (supra) was not an authority for the proposition that in a case where an employee is found to be sleeping during duty hours imposition of punishment of dismissal despite his bad record must be held to be disproportionate to the act of misconduct. The Labour Court thus committed illegality in holding that punishment of dismissal of appellant by respondent was disproportionate, more so, when on two earlier occasions also he was punished for similar negligence of duty.

7. The appeal has no merit and is accordingly dismissed summarily.