

(2018) 07 CAL CK 0018
In the Calcutta High Court
Case No : Writ Petition20613 (W) OF 2017

Tamralipta Co-Operative Spinning Mills Ltd.	APPELLANT
Vs	
State Of West Bengal & Ors.	RESPONDENT

Date of Decision : 04-07-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A, 11A

Citation : (2018) 07 CAL CK 0018

Hon'ble Judges : ARINDAM SINHA, J

Bench : Single Bench

Advocate : S.M. Obaidullah, Supratik Roy, D. Nandan Maity, Sudipto Panda, Munmun Tewary

Final Decision : Dismissed

Judgement

Award dated 28th April, 2017 by which order of dismissal has been set aside and lesser punishment imposed has been impugned. Facts are workman

was charge sheeted. Following charges were brought against him : -

1. Wilful insubordination or disobedience, whether alone or in combination with others, to any lawful or reasonable order of a Superior;
2. Habitual breach of any law applicable to the establishment;
3. Riotous and disorderly behaviour during working hours at the establishment or any act subversive of discipline;
4. Neglect of work. Recital in charge sheet contained, inter alia, : -

It has alleged against you that on 25.10.2011 in 12th shift while you were on duty, intentionally you argued for cots & apron cleaning for

maintenance work as well as used filthy languages against Maintenance-In-Charge. When Shri T.K. Jash, Shift-In-Charge protested and asked you to

restrain from type of behaviour, suddenly you became arrogant and tried to beat him, but Shri Nikhil Maity restrained you. If Shri Maity was not

present there, any incident may be happened. Again you abused him with filthy languages which are not at all utterable.

Disciplinary proceedings found fit to direct dismissal of the workman from service. The workman raised an industrial dispute under section 2A of

Industrial Disputes Act, 1947 and impugned award was made in terms of section 11A of the Act. Mr. Obaidullah, learned advocate appears on behalf

of petitioner and submits, Tribunal after having found that domestic enquiry conducted against the workman was legal and valid, on date fixed for

hearing on quantum of punishment, could not have re-appreciated the evidence to award as it did. It acted illegally.

He relies on judgement of Supreme Court in State of Tamil Nadu â?" Vs â?" S. Subramaniam reported in AIR 1996 SC 1232 and also (1996) 7 SCC

509. Relying on paragraph 5 in the judgement he submits, declaration of law therein regarding Tribunal having only power of judicial review should be

applied. In judicial review Tribunal could not have re-appreciated the evidence. He sought interference.

Section 2A of the Act includes dispute regarding dismissal of a workman to be an industrial dispute. In this case the dismissal came about upon

disciplinary proceedings initiated by petitioner against the workman. Dispute about dismissal went to the Tribunal. The Act under section 11A gives

power to, inter alia, Tribunal to give appropriate relief in case of discharge or dismissal of workman. By impugned award Tribunal found the workman

to have been guilty of minor misdemeanor.

Hence, it directed back wages for a period at 20 per cent, considered in its judgement to be proportional to the minor misdemeanor, to direct

reinstatement. It rejected contention of employer upheld in disciplinary proceedings, that it was a major misdemeanor. It took such view since, as

would appear from the recital and charges, the workman had not actually assaulted anybody. This court finds it to be a possible view. No interference

is warranted. The writ petition is dismissed.