

(2009) 03 DEL CK 0331

In the Delhi High Court

Case No : Writ Petition (C) No. 6172 of 2007

The Management of DTC

APPELLANT

Vs

Shri Baljit Singh

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 11A

Citation : (2009) 122 FLR 490

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Aarti Mahajan, for the Appellant; H.K. Chaturvedi and G.M.V. Ramana, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.

CM No. 1447/2009 in W.P.(C) No. 6172/2007

1. By way of this application the applicant seeks early hearing of the writ petition.
2. For the reasons stated in the application the same is allowed. The writ petition is taken for hearing today itself.
3. The application stands disposed of.

W.P. (C) No. 6172/2007

4. By way of the present petition filed under Articles 226 & 227 of the Constitution of India the petitioner seeks to challenge the impugned Award dated 3rd February, 2007 passed by the Labour Court.

5. Ms. Aarti Mahajan, counsel appearing for the petitioner submits that the respondent had indulged into grave misconduct as would be borne out from the article of the charges and therefore, the case of the respondent is of such a

nature where conscience of the Court was shocked, warranting award of the punishment of removal. The contention of the counsel for the petitioner is that the respondent workman did not display the destination on the display board of the bus, which fact must have caused lot of inconvenience to the commuters in boarding the bus. Counsel for the petitioner further submits that even the respondent was not carrying holiday tickets of children in the denomination of Rs. 2/- on that day. Due to all such acts, the respondent had flouted the instructions of the petitioner in this regard. After committing such illegalities the conduct of the respondent was also quite defiant and adamant as he dodged the checking officials by not producing the complaint book. Even he had refused to accept the challan issued by the checking officials under his signatures. Not only this even the previous record of the respondent would show that many times he was censured, warned, reprimanded and even once his two increments were stopped by the order of Disciplinary Authority dated 18th June, 1986. Counsel for the petitioner thus contends that the learned Labour Court failed to appreciate the gross negligence, misconduct, breach of trust and the manipulation made by the respondent in carrying out his duties and, therefore, punishment imposed by the Disciplinary Authority was absolutely justified and proportionate to various acts of misconduct committed by him. In support of his arguments counsel for the petitioner has placed reliance on the judgment of the Apex Court reported in Karnataka State Road Transport Corporation Vs. B.S. Hullikatti,

6. Refuting the said submissions of counsel for the petitioner, Mr. H.K. Chaturvedi, counsel for the respondent submits that the charges leveled against the respondent were not as grave or serious warranting his removal from service. Contention of counsel for the respondent is that u/s 11A of the Industrial Disputes Act the Labour Court in case of discharge or dismissal of the workman if not satisfied with the punishment order being justified, can set aside the same to direct the reinstatement of the workman on such terms and conditions as it thinks fit or to award lesser punishment. In the present case as per the counsel for the respondent the Labour Court has correctly exercised the jurisdiction while exercising power u/s 11A of the Industrial Disputes Act as the order of punishment was grave and unjustified totally disproportionate to the acts of the misconduct committed by him.

7. I have heard learned Counsel for the parties at considerable length. Before dealing with the contentions of the parties it would be worthwhile to reproduce Section 11-A of the I.D. Act, which is as under:

11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.?Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge

or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

8. Parliament inserted Section 11-A in the Act by Act 45 of 1971 which came into force with effect from 15-12-1971. In the Statement of Objects and Reasons for inserting Section 11-A of the Act, it was stated:

In *Indian Iron and Steel Co. Ltd. v. Workmen* the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc. on the part of the management.

2. The International Labour Organisation, in its recommendation (No. 119) concerning 'Termination of employment at the initiative of the employer' adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

3. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947.

9. The Hon'ble Apex Court recently discussed the scope of Section 11-A of the I.D. Act in *Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Ltd. and Another*, , the relevant para of the said judgment is reproduced as under:

19. Two extreme views viz. that the entire law has been rewritten and despite insertion of Section 11-A, the management neither could raise the legality or validity of the domestic enquiry as a preliminary issue or request the Tribunal to allow it to adduce evidence before it even if no enquiry has been held or as to whether such a right can still be exercised by the management came up for consideration in *Firestone Tyre and Rubber Co.*¹ One of the questions posed by Vaidialingam, J. was as to whether Section 11-A has made any changes in the legal position as regards the principles which had emerged from various decisions and as noticed in *Delhi Cloth & General Mills Co.*³ Rejecting both the extreme contentions and starting on the premise that the Act is a beneficial piece of legislation enacted in the interest of the employees, it was held that although the legal right of the management to raise such a preliminary issue and in the event the same was determined in favour of the workmen to lead evidence for the first time before the Tribunal/Labour Court could not be denied, opining: (*Firestone case*¹, SCC p. 830, para 36)

36. ? The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter.

It was furthermore held: (SCC p. 831, para 40)

40. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction u/s 11-A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.? (See also *United Bank of India v. T.N. Banks Deposit Collectors Union.*)

10. Therefore, from above it is fairly well settled now that in view of the wide powers of the Labour Court, it can in an appropriate case, consider the evidence which has been considered by the domestic tribunal and in a given case on such consideration arrive at a conclusion different from the one arrived at by the domestic tribunal. 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. But the power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management u/s 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court,

as the case may be, has to give reasons in support of its decision.

11. As regards the proportionality of punishment and interference by the industrial tribunal u/s 11-A, I.D. Act, the hon^{ble} Supreme Court in *Hombegowda Edn. Trust and Another Vs. State of Karnataka and Others*, observed as under:

23. In *V. Ramana v. A.P. SRTC* relying upon a large number of decisions, this Court opined: (SCC p. 348, paras 11-12)

11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case⁵ the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.

12. In the instant case, the tribunal observed in para 13 of the award that the findings of the enquiry officer regarding punishment of termination of services of the workman was disproportionate to the misconduct alleged against him, I do not find there is any infirmity in the award on this count. Enquiry was conducted for minor irregularities on the part of the workman in not displaying the destination on the display board of the bus; in not carrying holiday tickets for the children in the denomination of Rs. 2/-, as it was a Saturday and dodging the checking officials by not producing the complaint books. Furthermore, considering the past record of the workman, wherein minor adverse entries against the workman of the nature like loss of key to a locker; not coming to duty in dress; etc. are there, I do not feel that the punishment of termination of services is proportionate to the irregularities committed by him. Aforesaid irregularities by no standard can be held as gross misconduct warranting punishment of removal. Every minor and trivial irregularity on the part of the workman would not give power to the management to impose punishment of removal. Had the workman been on unauthorized leave for a long time or had used abusive language against officers of the management or had used physical force and power against the officers of the management and hurt them or had committed any act of corruption etc. then in such cases the matter would have

been different. But in the instant case, I feel that no reasonable person could inflict such punishment of removal, therefore, clearly the punishment of removal from service is disproportionate and pricks the conscience of the court.

13. The decision of the Apex Court in B.S. Hullikatti (Supra) relied upon by the counsel for the petitioner is not applicable in the facts of the present case as in the said case the Supreme Court dealt with the matter wherein the conductor knowing well the fare to be charged had charged higher fare from the passengers.

14. In view of the foregoing discussion, the award dated 3.02.2007 of the Ld. Tribunal holding the punishment of removal imposed upon the workman as illegal and unjustified and substituting it with the punishment of stoppage of 3 increments due with cumulative effect, reinstating workman with 50% backwages with other consequential benefits on failure of the management to prove that he was gainfully employed somewhere else, is not based on misplaced sympathy, generosity and private benevolence and thus do not suffer from any irregularity and the same is upheld and not interfered with. In view of the above discussion, the petition is dismissed.