
(2003) 05 RAJ CK 0006
In the Rajasthan High Court
Case No : .C.S.A. No. 96 of 2003

Union of India (UOI) and Another

APPELLANT

Vs

Asraf Ali and Another

RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2004) 102 FLR 499 : (2004) 3 LLJ 908 : (2004) WLC 248

Hon'ble Judges : Rajesh Balia, J;O.P. Bishnoi, J

Bench : Division Bench

Advocate : Arun Bhansali, for the Appellant; Jagdish Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—The matter comes up for orders on an application captioned as application u/s 17B of the Industrial Disputes Act, 1947. As on the basis of assertion made in the application itself, the respondent workman has attained the age of superannuation and the question of continuing to pay last drawn wages to the workman in the present case would not arise. However, learned Counsel for the appellant has urged that the appeal itself be heard on merit. We have heard learned Counsel for the parties.

2. The respondent workman Asraf Ali. was employed with the appellants for almost 24 years. At the time of imposition of punishment in question, he was working as Trademan "C" He was served with a charge-sheet on the ground that he wilfully remained absent from duty without obtaining leave from February 13, 1986 to May 21, 1986 and by order dated June 12, 1987, punishment of compulsory retirement was imposed on him by holding that the workman has accepted the delinquency. The appeal against the same was dismissed by the Appellate Authority on November 12, 1988 and a mercy petition was also dismissed.

3. This led to raising of an industrial dispute about compulsory retirement by way

of punishment which was referred to the Central Industrial Tribunal, Kota u/s 10 of the Industrial Disputes Act, 1947.

4. The workman has taken a definite stand that he has not admitted the fact about remaining wilfully absent from duty voluntarily, but under influence of assurance by the management that if he admits his delinquency, he will be let off with minor punishment. But a major punishment has been imposed.

5. The management has contended before the Industrial Tribunal inter alia that the workman has been leniently treated by having given the punishment of compulsory retirement for such a grievous charge of remaining wilfully absent from duty without obtaining leave for such a long duration. Apparently this stand betrays trace of assurance about taking lenient view if the workman admits his guilt and absolves the Management to prove the charge in Departmental Enquiry.

6. By taking into account the attending circumstances and the material before the Labour Court particularly of the Management witness, the learned Labour Court came to the conclusion that the confessional statement made during the Departmental Enquiry was induced by assigning a minor penalty and this cannot be said to be a voluntary statement of admission of misconduct. It also found that the punishment, even if the misconduct has been proved, was grossly disproportionate to the misconduct alleged against the workman and in view thereof, the punishment was set- aside holding that the punishment imposed upon the workman was not justified.

7. Aggrieved with the award of the learned Industrial Tribunal dated May 7, 2001, the management filed a writ petition before this Court, which has been dismissed by the learned single Judge, finding that there is no illegality in the award dated May 7, 2001.

8. Having heard the learned Counsel for the parties and perused the material before us, we are of the opinion that no interference is called for in this appeal.

9. From the perusal of the award, it is apparent that prior to the period in question, the workman was already on leave. According to the appellant themselves he has sent a Medical Certificate of illness for the period of absence to the Management. The only default which was attributed to the workman was that such Medical Certificate was not accompanied with an application for extension of leave.

10. This alone in our opinion was sufficient to reach a conclusion that the workman has been dealt with unfairly in the enquiry. It may be noticed that to our query the learned Counsel for the appellants further stated that the workman shall not be entitled to retiral benefits of his services were not regular. Thus, clear intention of the management was to unceremoniously dismiss the workman from service without any retiral benefit after about 24 years by inducing him to admit his wilful absence and even the ostensible major punishment of compulsory retirement was with an intention not to extend

benefits of compulsory retirement also.

11. We consider it a strange stage of the department of welfare state that even after 24 years of continuous service it has cheeks to say that the workman had no status of employment with them and consequently he had no right to any retiral benefits even if he would retire in ordinary course. In view of the fact that the workman has been punished for hypertechnical breach of Rules in submitting, the application for extension of leave when it is an admitted fact that he has submitted the certificate of sickness for the relevant period, visiting him with the punishment of compulsory retirement itself suggest that something was more than what meets the eye basically in the entire episode in holding an enquiry and imposing the punishment of compulsory retirement after inducing him to admit that he remained willfully absent from duty. It is wrong to contend that the Labour Court has no authority to interfere with punishment awarded even otherwise, the punishment was grossly disproportionate to the charges levelled and proved. Section 11A of the Industrial Disputes Act confers such power on the Labour Court/Industrial Tribunal to set-aside the punishment of terminating the service.

12. It has been contended by the learned Counsel for the appellants that since at any rate the workman has accepted that he has remained absent from duty without any leave, some substitute punishment ought to have been imposed by the learned Tribunal.

13. In the facts and circumstances of the case, we are of the opinion that no punishment ought to have been imposed on the workman for such a venial technical breach, when he had submitted certificate of sickness, genuineness of which, has not been disputed, showing reasonable ground for such absence. It was a plain and simple case which should be dealt with by issuing a warning to remain vigilant in future in making appropriate application alongwith Medical Certificate.

14. The appeal fails and is hereby dismissed. There will be no order as to costs.