
(2003) 03 AHC CK 0161
In the Allahabad High Court
Case No : C.M.W.P. No. 16978 of 1996

U.P. State Electricity Board	Vs	APPELLANT
Presiding Officer, Labour Court and Others		RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Constitution of India, 1950 — Article 227
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6(2A)

Citation : (2003) 3 AWC 2572 : (2004) 101 FLR 869

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : Ranjit Saxena, for the Appellant; P.C. Jhingan and Sarita Jhingan and S.C., for the Respondent

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for setting aside the Award passed by the Labour Court dated 13th November, 1995, by which the learned labour court has quashed the order of removal from service of respondent workman in spite of proving all the 15 charges against him, on the ground that his family members would suffer and directed for reinstatement of the workman with all consequential benefits except the back wages.

2. Facts and circumstances giving rise to this case are that the respondent workman raised the industrial dispute and the appropriate Government vide order dated 5.6.1992 made a reference as to whether termination of the services of the workman w.e.f. 8.3.1977 was in accordance with law, and if not, to what relief he was entitled to? in pursuance of the said reference the workman filed the claim petition submitting that he had been employed as a clerk on daily wage w.e.f, 3rd December, 1973 and he was issued a charge-sheet dated 18/20th September, 1976, containing 15 charges. Enquiry was conducted which was not in accordance with law. He had not been given any opportunity to defend himself nor the copy of the statement of the witnesses had ever been supplied to him

and vide order dated 8.7.1977 his services had illegally been terminated. Allegations of mala fide were also alleged as the workman had been office bearer of the Union.

3. The management contested the case submitting that charges against the workman had been very serious. Enquiry had been conducted in accordance with law and his removal from service was justified and there was no occasion for the labour court to interfere. However, in view of the pleadings parties were heard and the labour court came to the conclusion that the disciplinary enquiry conducted against the workman was not in accordance with law, and therefore, the order of the termination stood vitiated. In view of the provisions of the Industrial Disputes Act, 1947 (hereinafter called the Act, 1947) parties were permitted to lead the evidence, and after appreciating the same the labour court was satisfied that the management proved all the 15 charges against the workman successfully. It came to the conclusion that some of the charges were of really grave nature and delinquency of the workman was very grave, but considering the fact that he had served for some time and he was unemployed after termination from service, the labour court set aside the order of termination and directed for reinstatement of the workman with all consequential benefits except the back wages. Hence this petition.

4. Shri Ranjit Saxena, learned counsel for the petitioner has submitted that whatever may be the fate of the domestic enquiry held by the management against the workman, once the labour court after holding enquiry itself came to the conclusion that all the charges stood proved, there was no occasion for the labour court to interfere with the punishment.

5. On the contrary, Ms. Sarita Jhingan, learned counsel appearing on behalf of the workman has submitted that once the labour court was satisfied that the punishment imposed was too harsh and workman should be deprived only of the back wages, in a limited jurisdiction of this Court under Article 227 of the Constitution no interference is required and the petition is liable to be dismissed.

6. I have considered the rival submissions made by the learned counsel for the parties and perused the record.

7. This Court has very limited scope under Article 227 of the Constitution as per the law laid down in Mohd. Yunus v. Mohd. Mustaqim and Ors., AIR 1984 SC 38, wherein it has been held that even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution and the power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice. (Vide Constitution Bench judgments of the Apex Court in D.N. Banerji Vs. P.R. Mukherjee and Others, and Nagendra Nath

Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. (Vide Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu, ; Rukumanand Bairoliya Vs. The State of Bihar, ; Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, ; Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, ; Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others, ; Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, and Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others,

8. It is well-settled that power under Article 227 is of the judicial superintendence which cannot be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (Vide Mrs. Rena Drego Vs. Lalchand Soni, Etc., ; Chandra Bhushan (Deceased) by Lrs. Vs. Beni Prasad and Others, ; Smt. Savitrabai Bhausahab Kevate and Others Vs. Raichand Dhanraj Lunja, and M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another, Unless the findings are patently erroneous and de hors the factual and legal position on record, exercising power under Article 227 of the Constitution may not be justified and in that eventuality disturbing the findings of facts would amount to Jurisdictional error. [Vide Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde and Another, Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling reappreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (Vide Union of India and Others Vs. Himmat Singh Chahar, Similarly, in Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, , the Hon''ble Apex Court has held that there is no justification for the High Court to substitute its view for the opinion of the authorities/courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

9. In Mohan Amba Prasad Agnihotri and Others Vs. Bhaskar Balwant Aher (D) Through I.Rs., the Hon''ble Supreme Court held that jurisdiction of the High Court under Article 227 of the Constitution is not appealable but supervisory and, therefore, it cannot Interfere with the findings of fact recorded by the courts below unless there is no evidence to support the findings or the findings are totally perverse. Similarly, in Union of India and Others Vs. Rajendra Prabha and Another, the Hon''ble Apex Court held that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot reappreciate the evidence nor can it substitute its subjective opinion in place of the findings of authorities below.

10. In Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers'' Union and

Another, the Hon"ble Supreme Court observed that it is impermissible for the writ court to reappreciate the evidence liberally and draw conclusions on its own on pure questions of fact for the reason that it is not exercising the appellate jurisdiction over the awards passed by the Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken.

Similar view has been reiterated by the Supreme Court in *State of Maharashtra v. Milind and Ors.* (2001) 1 SCC 4 ; *M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd.*, and *Ouseph Mathai and Others Vs. M. Abdul Khadir*,

11. In view of the provisions of Section 6(2A) of the Act 1947, Labour Court is competent to set aside the discharge or dismissal and reinstate the workman and competent also to substitute any of lesser punishment for discharge or dismissal, as the circumstances of the case may require. The issue of jurisdiction of the Industrial Tribunal/Labour Court to interfere with the quantum of punishment has been considered by the Hon"ble Apex Court time and again and it has categorically been held that generally Tribunal should not interfere with the same but in exceptional circumstances where the punishment is so harsh as to suggest victimization and found not to be commensurate with the degree of guilt, interference is permissible. For such an interference, the Industrial Tribunal must record reasons as the award is subject to judicial review in writ jurisdiction. (Vide *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, ; *Rama Kant Misra Vs. The State of Uttar Pradesh and Others*, ; *Management of Hindustan Machine Tools Ltd., Bangalore Vs. Mohd. Usman and Another*, ; *Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.*, ; *Christian Medical College Hospital Employees" Union and Another Vs. Christian Medical College Vellore Association and Others*, and *Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another*,

12. In *Lloyds Bank Ltd., New Delhi Vs. Panna Lal Gupta and Others*, the Supreme Court held that Tribunal should interfere with the punishment only if the conduct of the employer shows lack of bona fides or victimisation of employee or unfair labour practice. In *Hind Construction and Engineering Co. Ltd. Vs. Their Workmen*, the Hon"ble Apex Court held as under :

"The Tribunal may in a strong case interfere with a basic error on a point of fact or a perverse finding but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry though it may interfere where the principles of natural justice or fair play have not been followed or where the enquiry is so perverted in its procedure as to amount to no enquiry at all.....The Tribunal is not required to consider the propriety or adequacy of

the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate regard being had to the particular conduct and the past record or is such as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice....."

13. In Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourakara Sangha Etc., , the Hon'ble Supreme Court held that where the labour court comes to the specific finding of fact that charges of breach of trust and misappropriation of goods had been clearly proved, the labour court cannot set aside the order of removal of workman and pass the order of reinstatement.

14. The case of the petitioner requires to be examined in view of the aforesaid settled legal propositions. Admittedly, 15 charges had been framed against him and found proved by the labour court itself after holding the enquiry. The said charges included not posting the meter reading in the ledgers though the meter readings were handed over to him by the meter reader and he did not issue the bills. Thus, charge of failure to discharge his duties ; realising the cash from the consumer on 1.5.1976 and failed to paste the receipt in the revenue cash book on the same date, and refusal to receive the letters of warning of his misconduct ; failed to realise the cash from consumers who had come to make payments on 3.5.1976 ; coming late to the office by 1, 1/2 hours on 10.5.1976 without any prior permission or intimation and handing over the keys of the cash chest to another R.G.C. ; refusing to receive the letters dated 11.5.1976 and thus defiance of the orders of the superiors ; not Issuing the receipts to the consumer Shri M. L. Goel on 14.6.1976 and thus guilty of violation of discharge of his duties ; not depositing the cash in the two Banks realised by him from consumers on 7.6.1976 and 8.6.1976 ; absence from duty on 6.7.1976 without leave ; refusing to receive the letters mentioned therein from time to time ; entering into the office of Shri Prem Kumar, S.D.O. on 8.7.1976 and pressurising him to sanction the leave for 6.7.1976 with full pay and as it was not agreed upon getting agitated and making an attempt to cause physical harm to him ; addressing the letter to the high authorities, i.e., Chief Minister directly without sending them through proper channel ; taking unauthorised possession of residential unit breaking open the lock ; and further making misrepresentations in the application twisting the facts that the said residence was lying vacant without any lock.

15. If all the 15 charges stood proved before the labour court itself, the only question remains as to whether labour court would be justified in interfering with the punishment of removal? The charges of absence from duty without leave, coming to the office late, not depositing the money in time received from the consumers, not making meter readings in the ledgers and not sending the bills in time stood proved. But more serious charges remain Nos. 12, 14 and 15. Charge No. 12 had been that respondent workman pressurised his officer concerned to

grant him leave with full pay and as he did not agree he not only abused him but tried to assault him physically. Had other person on the scene not intervened, workman could have given a good thrashing to the said officer. Charges No. 14 and 15 relate to occupying a house unauthorisedly by the workman by breaking open the lock and further twisting the fact and making a misrepresentation that the house was lying vacant unlocked and therefore, he occupied it. Thus, charges are of a grave nature. The cumulative effect of all the charges warrant showing no sympathy whatsoever to such a workman. The labour court has gravely erred in showing misplaced sympathy which the respondent workman did not deserve. Respondent-workman was employed on 3rd February, 1973 and removed on 8th March, 1977, thus worked only for a period of three years three months. Reference to the labour court was made on 5th June, 1992, i.e., after 15 years and 3 months. Where was the occasion for the labour court to grant such a relief at such a belated stage? The labour court failed to appreciate that the dispute itself might not have been in existence after 15 years of termination of his services. The consideration taken by the labour court that his family members would suffer is an extraneous consideration which ought not to have been taken into account at all. In such a fact situation, where the charges have been of a very grave nature, punishment of removal from service could not be held to be disproportionate to the delinquency and thus, there was no occasion for the labour court to substitute the punishment lesser than awarded by the employer. It is shocking that the labour court had not awarded any punishment whatsoever except depriving the workman from back wages which he could have been deprived of otherwise also for getting the reference from the appropriate authority at such a belated stage.

16. There is no dispute to the settled legal proposition that the result of the enquiry held by the labour court relates back to the date of termination. In *Desraj Gupta v. Industrial Tribunal*, AIR 1990 SC 2174, the Apex Court held that in a case where Industrial Tribunal comes to conclusion that the domestic inquiry was unfair and holds the inquiry itself and even then it comes to conclusion that the termination was valid or termination order was passed on substantial evidence ; the termination would be effective from the date the labour court passed the order. However, in *R. Thiruvirkolam Vs. Presiding Officer and another*, the Supreme Court took a contrary view and held that in such an eventuality, the order of the labour court will relate back to the date of order of termination was passed by the employer and in such a case, the workman cannot be held entitled for any relief for the interregnum period from the date of termination order passed by the employer and final award made by the Tribunal.

17. All these cases were reconsidered by Supreme Court in *Punjab Dairy Development Corporation Limited and another, etc. Vs. Kala Singh, etc.*, and the Apex Court held that the judgment in *Desraj Gupta's case (supra)* was not a correct law. The Supreme Court had subsequently, in *Director, State Transport, Punjab and Another Vs. Gurdev Singh and Another*, has reiterated the law laid down by Supreme Court in *R. Thiruvirkolam's case (supra)*. More so, in *Graphite*

India Ltd. and Another Vs. Durgapur Projects Ltd. and Others, , the similar principle has been reiterated and it has been held that when an action is approved, it would relate back to the date of action.

18. In the instant case, as the result of the enquiry held by the labour court related back to the date of removal by the employer, the workman cannot be awarded any relief.

19. In view of the above, petition succeeds and is allowed. Labour court award dated 13.11.1995 is hereby set aside and the punishment of removal imposed by the employer is held to be commensurate to the delinquency.

20. In the facts and circumstances of the case, there shall be no order as to costs.